From: Papakie MSgt Brian R
Sent: Wednesday, December 01, 2010 10:09 AM
To: Averhart CWO4 James T
Subject: RE: POI status (UNCLASSIFIED)
Attachments: MCO 1640.5B.pdf; SECNAVINST 1640.9C - DON Corrections Manual.pdf
Signed By: (b) (6) [redacted]

CWO4 Averhart,

Here are the answers to questions from the prosecutor. Specifically on question 3; I believe we should support someone from their office coming down and obtaining the proper information (copies), but not a task for our Marines in Admin - To include 5 logs will require substantial paper thus the need for administrative supplies from their office.

1. MAX Custody procedures. I have been looking at the regulation regarding MAX custody detainees and their movement and I have a few questions. The uniform section talks about detainees being moved in the uniform of their service. Does this mean that PFC Manning should be moved in ACU's rather than in the prison uniform? If the detainees should remain in their detainee uniform then do we have another Army detainee where we adhered to these standards. I would like to have some examples to cite to Defense for the reasons that we have to move PFC Manning in his detainee uniform and why his restraints have to remain on.

(1a) No; both pre and post trial inmates will be housed and transported according to that confinement facility under:

Orders and Directives: SECNAVINST 1640.9C and MCO 1640.5B

SECNAV 4201. pg 4-9 (5) Person's uniform outside a Navy confinement facility shall not identify the individual as a prisoner. Prisoners confined in Marine Corps confinement facilities shall wear the standardized prisoner uniform per MCO 1640.5B.

MCO 1640.5B 1. Purpose. To establish procedures for wearing the standardized prisoner uniform by pretrial and post-trial prisoners confined in Marine Corps brigs.

5. Policy - under sections (a) and (f)

a. All pretrial and post-trial prisoners in all custody grades, to include installation custody, shall wear the standardized prisoner uniform.

f. The prisoner uniforms will be worn to all activities with the exception of courts-martial, civil hearings, and when being transferred to other confinement facilities, at which time the appropriate seasonal uniform or civilian attire, dependent on discharge status, shall be worn.

Restraints:

SECNAV 1640.9C

4201. (5) MAX prisoners shall wear restraints at all times when outside the maximum-security area and be escorted by at least two escorts (confinement facility staff or certified escorts, per article 7406).

APPELLATE EXHIBIT 438 h
PAGE REFERENCED: _____
PAGE ___ OF ___ PAGES

(6) On a case-by-case basis, the CO/OIC/CPOIC may authorize additional restraint for movement of specific MAX prisoners. A military judge may direct that restraints be removed from a person in the courtroom if, in this judge's opinion, such restraint is not necessary. In all cases, the limitations of article 1102 of reference (b) shall be observed.

2. Determination of POI status. Defense has made a request that PFC Manning 's status be reduced from POI to some other status where he is able to have more time outside or workout in his cell. My understanding is that his status determination is made based on a list of factors including his charges, mental health and behavior. Since the Defense has made the request to lower his status it is something that we have to at least address. Is there a lesser level of POI that PFC Manning could be moved to. If the recommendation of the Brig personnel is to have him remain on POI status that is fine, we just need to have it addressed to the Defense counsel.

(2a) There is no subsequent level to Prevention Of Injury (POI); under the conditions of Detainee Manning's previous suicidal gesture and the most recent note of behavior abnormalities he will remain POI. The status of POI gives the facility commander the flexibility of taking the necessary precautions for an inmate with the potential to harm themselves, but reduce the number of restrictions placed on an individual. POI Status is not a form of punishment but rather precautionary measure.

SECNAV 1640.9C - pg 4-14

a. Some prisoners require additional supervision and attention due to personality disorders, behavior abnormalities, risk of suicide or violence, or other character traits. If required to preserve order, the BRIG Os or, in their absence, the brig duty officers/duty brig supervisors may authorize special quarters for such prisoners for purposes of control, prevention of injury to themselves or others, and the orderly and safe administration of the confinement facility. A hearing to determine the need for continued administrative segregation of the prisoner shall be conducted. This hearing may be by board action or by a member of the confinement facility
appointed in writing by the BRIG O, and a written recommendation to the BRIG O will be provided within 72 hours of the prisoner's entry into segregation.

d. Prisoners 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. CO/OIC/CPOIC may direct removal of prisoner's clothing when deemed necessary. Prisoner must be under observation of a supervisor of the same sex. Closed circuit television may be installed at a limited number of cells for observation, although cross gender monitoring is not authorized.

SOP section 6004. CLASSIFICATION AND ASSIGNMENT (C&A).

(e) Prevention of Injury (POI). Those prisoners who have given an indication that they intend or are contemplating harming themselves or others will be assigned Maximum Custody.

3. Sunshine Call Logs. The defense counsel is concerned about PFC Manning's mental and physical health in relation to his small amount of time outside. In order to combat any potential Article 13 issues I would like to get a copy of the logs that show when PFC Manning went outside and how long he stayed there. I know that he usually gets 20 minutes daily but I need to have the logs that show that.

(3a) We will provide copies of the logs, please provide a paralegal to schedule a visit to the facility with administrative supplies and make the appropriate copies. Each log covers a period of approx one month; due to his confinement length, the period covered would be approx five (5) log books.

-----Original Message-----
From: Haberland, John CPT MIL USA [mailto:(b)(6) [redacted]]
Sent: Tuesday, November 30, 2010 2:54 PM
To: Averhart CWO4 James T
Cc: Greer LtCol Christopher M; Broadston Major Christian J; Ebitz Maj Amy R
Subject: POI status (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

Chief Averhart,

I wanted to touch base with you about a few questions that we have on policies, procedures and status.

1. MAX Custody procedures. I have been looking at the regulation regarding MAX custody detainees and their movement and I have a few questions. The uniform section talks about detainees being moved in the uniform of their service. Does this mean that PFC Manning should be moved in ACU's rather than in the prison uniform? If the detainees should remain in their detainee uniform then do we have another Army detainee where we adhered to these standards. I would like to have some examples to cite to Defense for the reasons that we have to move PFC Manning in his detainee uniform and why his restraints have to remain on.

2. Determination of POI status. Defense has made a request that PFC Manning 's status be reduced from POI to some other status where he is able to have more time outside or workout in his cell. My understanding is that his status determination is made based on a list of factors including his charges, mental health and behavior. Since the Defense has made the request to lower his status it is something that we have to at least address. Is there a lesser level of POI that PFC Manning could be moved to. If the recommendation of the Brig personnel is to have him remain on POI status that is fine, we just need to have it addressed to the Defense counsel.

3. Sunshine Call Logs. The defense counsel is concerned about PFC Manning's mental and physical health in relation to his small amount of time outside. In order to combat any potential Article 13 issues I would like to get a copy of the logs that show when PFC Manning went outside and how long he stayed there. I know that he usually gets 20 minutes daily but I need to have the logs that show that.

Please let me know if any of these things need clarification. Thank you for your help.

Very Respectfully,

CPT John B. Haberland

Regimental Judge Advocate

3rd U.S. Infantry Regiment (The Old Guard)

(b)(6) : [redacted]

Classification: UNCLASSIFIED
Caveats: FOUO