Article 13

Violations

- MAX and POI after 27 August 2010
  - No legitimate non-punitive basis
  - More onerous than necessary to ensure presence at trial
- SR – "Shall be Removed"
  - Shall does not equal "a time to be determined"
- 20 Minutes of "Sunshine Call" in Restraints
  - Absolutely no excuse for action
  - 1 Hour is standard even for disciplinary segregation

Violations

- Underwear Removal on 2 March through 20 April 2011
  - Clear circumvention of SECNAVINST
- Standing Naked on 3 March 2011
  - The Government's action in not calling any witnesses speaks for itself

APPELLATE EXHIBIT 443
PAGE REFERENCED:_____
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MAX and POI

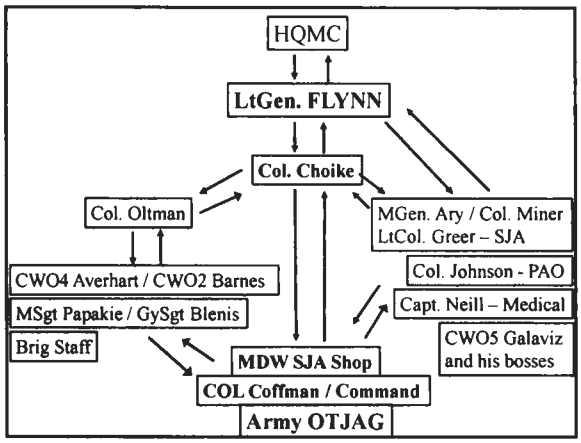
- Issue is not whether he was treated differently than other MAX and POI detainees, the issue is why was he on MAX and POI after 27 August 2010?

Influence of LtGen. Flynn

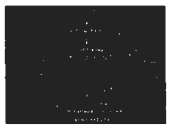
- LtGen. Flynn believed PFC Manning was a suicide risk.
- Col. Choike followed LtGen. Flynn's guidance stressing the "absolute necessity" of keeping a close watch on PFC Manning.
- Did LtGen. Flynn issue an order?
- By not stating that he had an issue with keeping PFC Manning on MAX and POI, he was sending the intended message

Influence of LtGen. Flynn

- Weekly Reports filed by Brig that everyone knew were being seen by LtGen. Flynn and higher
- March Email – LtGen. Flynn concurrence required
- Nothing in writing if he did not concur
- LtGen. Flynn never non-concurred
- LtGen. Flynn involved in the most minor of details



Complete Breakdown



- No one stood up to be the voice of reason
- Judge advocates abdicated their role as the conscience of the command
- MDW SJA shop worried more about combating potential Article 13 issues than stepping in to do the right thing

Complete Breakdown

- Critics were silenced due to high ranking individuals opining that the conditions at Quantico were proper
- So called "visits" or "inspections" were not to determine if PFC Manning should be on MAX and POI, but just to say he was being treated the same as every other MAX and POI detainee
- Incestuous relationships where everyone knew each other
- Visits by high ranking officials simply gave the stamp of approval to the Brig's conduct

Complete Breakdown

- Capt. Hocter tried to be the voice of reason, but was told by Col. Oltman "we will do what we want to do."
- Col. Oltman stated the obvious, "nothing is going to happen to him on our watch, and our way of making sure of that is that he will stay in MAX and POI indefinitely"
- Group think prevailed
- Trial counsel and Army chain of command turned a blind eye to egregious situation

Callous Indifference

- CWO2 Barnes – if something happens to him my career is over
- GySgt Fuller – "if something happened, we knew we'd be in trouble" and "we knew our actions would be scrutinized"
- SSG Jordan – we knew that "we needed to toe the line" and do everything right
- GySgt Blenis – if he did commit suicide, "we'd be answering questions … I can't explain that in my court-martial"

Callous Indifference

- Everyone at Quantico claimed that they did not believe that long-term POI and MAX was detrimental to PFC Manning's well-being
- CWO2 Barnes indicated that PFC Manning wasn't deprived of anything – in fact, he even had steak and lobster dinners
- Capt. Hocter testified that PFC Manning fared as well as he did because of his strength of spirit and the professional help he was getting
- COL Malone testified that the conditions were an added stressor and made his job more difficult

Callous Indifference

- What's shocking in this whole scenario is not the apparently odd behaviors by PFC Manning, it's the lack of odd behaviors
- Quantico brig was like a parallel universe where everything you said and did was used against you; where communication was required but never used; where the brig created the very conditions that were then used to justify the restrictions

Requested Relief

- Dismissal of all charges with prejudice
- 10 for 1 credit
- Consideration of pretrial punishment in calculating appropriate sentence

MAX and POI

- 6 x 8 Cell for Approximately 23 hours a day
- Suicide prevention mattress
- Suicide Prevention blankets – no pillow
- No natural light
- All possessions taken from him
- Constant observation
- Five minute checks

MAX and POI

- Had to ask for toilet paper and soap
- Ate all of his meals alone in his cell with a plastic or metal spoon
- Facility lockdown every time he was moved
- Moved in full restraints by at least three guards
- 29 July 2010 to 10 December 2010 only 20 minutes of sunshine call in restraints
- Not allowed to exercise in his cell
- No laying or leaning against wall - *see* AE 259 FN 23

MAX and POI

- Family and friend calls and visits monitored and in non-contact booth
- No contact with other detainees
- Guards testified no one was ever on his left or right and that he could not speak to anyone
- Woken up if he accidently covered himself
- Limited to one book or magazine
- If not actively reading, book or magazine taken away from him

Suicide Risk Watch

- A guard posted immediately outside his cell
- Prescription glasses taken away from him
- Clothes taken away from him
- Didn't leave his cell for his 20 minutes of sunshine call

Conditions Like Death Row

- Capt. Hocter testified the PFC Manning's treatment was "unprecedented" and that he had "never experienced anything like this in 24 years"
- COL Malone testified that death row inmates were treated better than PFC Manning
- Capt. Moore also testified that detainees on death row were treated better than PFC Manning
- SSgt Jordan testified that death row detainees got two hours of recreation a day in recreation groups

POI

- SECNAVINST contemplates that administrative segregation is a ***short term*** status
  - Medical officer must visit every day
  - Highly desirable for a chaplain to visit every day
- Length of Time on SR/POI
  - LTC Hilton – 7 days and then transferred to psych ward
  - GySgt Fuller – a few days to a week
  - CWO5 Galaviz – other than a chronic "cutter" maybe a month or two
  - GySgt Blenis – 1 month – noted that PFC Manning was "by far" the longest
  - MSgt Papakie – 2 weeks was the longest
  - CWO4 Averhart – 2 months, "if that"
  - CWO2 Barnes – maybe "a few days"

PFC Manning's POI Status

- POI equaled MAX for the Brig per Brig SOP
- CWO4 Averhart directed PFC Manning to stay in POI until completion of RCM 706 Board
- POI was a "not on my watch" determination
- POI falls under administrative segregation in the SECNAVINST

PFC Manning's POI Status

- Arbitrary and variable standard for POI
  - Staff ignored the recommendations of mental health professionals and the good behavior of PFC Manning
- PFC Manning needed to "convince" everyone that he was not a risk of self-harm
- PFC Manning apparently needed to "communicate" more with his jailors

PFC Manning's POI Status

- PFC Manning needed to 100% convince GySgt Blenis that he was not going to harm himself.
  - MSgt Papakie believed if PFC Manning was ever given the chance to harm himself he would do so
- According to CWO2 Barnes, it was PFC Manning's "own fault" that he was on POI – "the ball was in his court"

The "Process"

- C & A Board Notification of Right to Appear
  - Form changes to give the detainee an election to attend on 21 January 2011 (PFC Manning attends)
  - Detainees never show up before the board
- C & A Board Documents Pre-January 2011
  - Did not use form between 1 August 2010 and 3 January 2011
  - No indication of board reasoning pre-January 2011 – no written approval by Brig OIC
  - Started to use after receiving notification that Defense would receive documentation in discovery

The "Process"

- C & A Board Membership
  - Selected by Brig OIC
  - Form pre-filled out by counselor with recommended status
  - Only those boxes which supported the counselor's recommendation were ticked
  - GySgt Blenis on the Board – CW05 Galaviz says conflict of interest
  - Comments were cut and pasted week after week, boxes were ticked without supporting documentation
  - Passed from senior to junior member of the board for vote (always 3-0 vote)
  - Board spent 1 to 10 minutes on decision
- Approval by Brig OIC
  - Did not review documentation
  - Vocal approval

GySgt Blenis

- ***He was Not Manning's Advocate***
  - PFC Manning's counselor – supposed to be his #1 advocate
  - Referred to Manning looking at him "all retarded" when he asked him a question after initial indoctrination
  - Refused birthday present for PFC Manning because he "felt like being [a] dick[]." He did not think this comment was unprofessional because it didn't appear in CORMIS.

GySgt Blenis

- ***He was Not Manning's Advocate***
  - He claims that the comment about PFC Manning's "panties" was not unprofessional – and that he refers to his own underwear as panties
  - Saw PFC Manning only 20 minutes to 1 hour max per week
  - He lied to PFC Manning – said it was the doctors who continued to recommend that PFC Manning be on POI

GySgt Blenis

- Claims that PFC Manning was the most uncommunicative detainee he's ever seen in his 16 years other than a death row inmate:
  - With the death row inmate, he took off the inmate's restraints to build trust – he refused to do that with PFC Manning;
  - He failed to annotate ***anywhere*** in his notes that PFC Manning was the most uncommunicative detainee other than the death row inmate. When questioned about this, he said he "wasn't required to."

GySgt Blenis

- He failed to tell any of the doctors that PFC Manning was apparently the second most uncommunicative detainee he's ever seen
- Video from 18 January belies any argument that PFC Manning was an uncommunicative detainee
- "Communication" is convenient *ex post* justification that all Quantico staff is using for draconian conditions of confinement

GySgt Blenis

- ***Logbook Entries***
  - We've heard from person after person that PFC Manning was kept in MAX and POI because of his "abnormal behavior"
  - This came about only after Gysgt Blenis overheard some guards talking about PFC Manning's sleepwalking in late November 2010
  - Guards had never independently reported any of these behaviors as a problem and said it was actually normal for bored MAX detainees
  - Then CWO4 Averhart ordered annotations in a special logbook every 5 minutes so the annotations could be easily found

GySgt Blenis

- ***Logbook Entries***
  - Gysgt Blenis testified that by this point, "we knew where this whole thing was heading" and that "questions were going to be getting asked"
  - Logbook was used to proactively justify the POI status – ammunition against PFC Manning
  - No one ***ever*** talked to PFC Manning about any of these apparently odd behaviors
  - Mental health professionals said behavior was normal and did not indicate that PFC Manning was a risk of self harm

GySgt Blenis

- ***Blenis Scary Lack of Logic***
  - Why didn't you accept Capt. Hocter's recommendation that he was not a suicide risk? "If I take his recommendation, then it's not my recommendation, it's his recommendation. And I'm just a puppet."
  - When asked about PFC Manning's poor family ties and whether he could do anything to change that, Blenis responded that PFC Manning could work – from jail, while being monitored – to build up a relationship with estranged family members

GySgt Blenis

- ***Blenis Scary Lack of Logic***
  - Blenis claims to have been "dumbfounded" by PFC Manning's apparently contradictory statement to the C&A Board, indicating "that was huge for me" but never discussed the statement with PFC Manning again (or his doctors)
  - When asked whether there was ever a time that PFC Manning's comment "always planning never acting" would be less important, Blenis responded "always is always"
  - When asked if a doctor definitively told him that PFC Manning's sleepwalking/licking bars was not volitional he'd still consider it odd behavior that would factor against PFC Manning, he said yes.

Other Members of Board

- **Fuller and Jordan**
  - They just went along with GySgt Blenis
  - He was their superior
  - They believed he knew PFC Manning better than they did
  - Never changed any of the forms; never ticked any new boxes

Other Members of Board

- **Fuller and Jordan**
  - Form approved was always that filled out by GySgt Blenis
  - Never talked to PFC Manning about their noted concerns: issues in Kuwait; comment on intake questionnaire; appearance before C&A board; "abnormal" behavior; 18 January incident.
  - Didn't have full details on key issues – e.g. didn't know why PFC Manning removed names from visitation list; didn't know that doctors were aware of apparently unusual behavior

Weekly C & A Board Recommendations

- For nine months the recommendation was always the same – remain in MAX and POI
- Testimony showed that the POI was "driving the train" on the MAX classification
- Everybody testified that PFC Manning was not violent and dangerous, nor was there a concern that he was an escape risk

Weekly C & A Board Recommendations

- We heard testimony that the C&A Board members and the Brig OIC considered various MAX factors (low tolerance of stress, seriousness of the charges, etc.)
- But these are relevant only insofar as they are indicators that someone is an escape risk or dangerous/violent – in other words, they are a way of figuring out whether someone is dangerous/violent or an escape risk
- The factors, in themselves, don't justify assignment of a status if it clear that a detainee is not dangerous/violent or an escape risk

Mental Health Professionals

- Capt. Hocter consistently recommended that PFC Manning be removed from POI from 27 August 2010 to his departure in January 2011
- COL Malone consistently recommended that there was no clinical reason for PFC Manning to be on POI
- Capt. Hocter and COL Malone did not believe that suicide risk was necessary on 18 January 2011
- Capt. Moore also agreed that there was no reason for PFC Manning to be on POI
- LTC Russell's opinion was consistent with Capt. Hocter, COL Malone, and Capt. Moore

Mental Health Professionals

- Both Capt. Hocter and PFC Manning testified that they visited for approximately 1 hr/week; GySgt Blenis and GySgt Fuller said that Capt. Hocter saw PFC Manning 1 hr/week
- CWO4 Averhart thought Capt. Hocter was "in-and-out" and spent only 10-15 minutes/week with PFC Manning
- Neither Gysgt Blenis nor CWO4 Averhart trusted Capt. Hocter – they thought he missed the call on CPT Webb and they blamed him for CPT Webb's suicide
- Col. Oltman also blamed Capt. Hocter for CPT Webb's suicide

Mental Health Professionals

- CWO4 Averhart believed that Capt. Hocter's evaluations were contradictory and wrote that Capt. Hocter was just trying to "cover his six"
- CWO4 Averhart thought the write-up was "generic" and wanted more information from Capt. Hocter.
- No one ever spoke to Capt. Hocter to indicate that they were concerned about his treatment of PFC Manning and his recommendations
- If they had, Capt. Hocter would have gladly resigned and gotten a different medical provider for PFC Manning

Mental Health Professionals

- No one tried to get Capt. Hocter replaced. CWO4 Averhart testified that it "was not my job" to try to get Capt. Hocter replaced. Everyone was OK with just ignoring his recommendations and carrying on business as usual
- CWO4 Averhart admitted on the stand that this was not fair to PFC Manning and that if he had a recommendation he trusted this "would have definitely helped a lot"
- CWO5 Galaviz testified that the proper protocol would be to get a second opinion and then to have the doctor replaced if needed

CWO4 Averhart

- Retained PFC Manning in MAX and POI or SR for 6 months
- Once CWO4 Averhart decided PFC Manning was on POI, he was on MAX automatically per the Brig SOP
- No real justification for why – in fact, asked GySgt Blenis to draft "a" reasoning for MAX and POI for the Article 138 Complaint
- When pressed for why PFC Manning was on POI he stated that it was mainly because of the seriousness of the charges, what happened in Kuwait, and intake questionnaire

CWO4 Averhart

- Tried to claim that PFC Manning was on MAX and POI for his own protection
- Disingenuously claimed on the stand that PFC Manning was on POI because he was not "communicative"
- CWO4 Averhart never once mentioned a lack of communication as being a relevant consideration in his Response to the Article 138 Complaint

CWO4 Averhart

- Claimed that PFC Manning's "abnormal" behavior caused him concern even though he knew Capt. Hocter indicated it was not cause for concern
- CWO4 Averhart never talked to PFC Manning about the behavior that he claimed troubled him
- Issued an order not to remove PFC Manning from MAX and POI until completion of 706 Board – but now claims that he "misarticulated" what he meant and it wasn't really an order

18 January 2011 Incident

- It is clear that PFC Manning had an anxiety attack at recreation call
- Afterwards, MSgt Papakie and CWO4 Averhart induced yet another anxiety attack
- CWO4 Averhart ordered PFC Manning on SR and didn't take him off when the doctors said it was not needed
- The incident which the brig itself created was then used against PFC Manning to keep him in POI
- In the video we see PFC Manning trying in earnest to explain that he is not suicidal

21 January 2011 C & A Board

- PFC Manning is nervous, stuttering and his hands are shaking
- He explains why he does not belong on MAX and POI
- The board asks him about his statement on his intake questionnaire – he says "it may have been false"
- Then they ask him a trick question – "If that was false, couldn't what you are saying now be false"
  - PFC Manning responded truthfully – yes, it could be false, but it's not (after all, that's why he is there to plead to be taken off of POI)
- The board then used what they saw as contradictory statements against him for the remainder of his time at Quantico

CWO2 Barnes' Arrival

- Nothing changed with CWO2 Barnes
- She knew people were watching; she knew LtGen. Flynn was watching
- Most junior person to be running a brig at the time and she wasn't going to risk her career
- She kept PFC Manning on MAX and POI because it was a no-lose proposition for her

CWO2 Barnes in Role of Doctor

- She did not trust COL Malone's medical judgment
- She disagreed with COL Malone's decision to take PFC Manning off medication – she thought that being in a "friggen" brig was a stressor for PFC Manning and that he needed medication
- If you are suicidal before given medication, then she believed you would be suicidal if taken off of medication
- As COL Malone testified, "she didn't like what I had to say" and "we agreed to disagree"
- Just like her predecessor, CWO2 Barnes completely ignored the advice of a medical professional

CWO2 Barnes' Cookie Cutter Approach

- Despite saying she does not use a cookie cutter approach, she refuses to take PFC Manning off of POI
  - This is true despite the fact that PFC Manning was communicative with her and, in her words, "jovial" in January and February
- By March, PFC Manning is increasingly frustrated with the conditions of his confinement.
- 2 March 2011 comment to MSgt Papakie
- CWO2 Barnes then orders PFC Manning's underwear to be taken away at night

Removal of Underwear

- COL Malone told her that PFC Manning's comment was a coping mechanism and part of the intellectualization of the conditions of his confinement
- CWO5 Galaviz and Lt.Col. Wright told CWO2 Barnes and COL Oltman that removing underwear without placing a detainee in SR was in violation of the SECNAV and inconsistent with "the way we are supposed to do business"
- CWO2 Barnes and COL Oltman ignored the subject-matter experts
- CWO2 Barnes' position is that "well, that is their opinion" and then later admits that it was contrary to SECNAVINST

Standing Naked at Attention

- PFC Manning was ordered to stand naked at attention the morning of 3 March
- Nobody has refuted this account of what happened
- GM2 Webb testified that if he were the DBS, there is no way he would simply walk by PFC Manning's cell
- If PFC Manning stood naked at attention voluntarily, PFC Manning would have been disciplined and you would have seen an incident report
- The reaction would not be, as CWO2 Barnes claims, "Hey don't do that anymore"

Decline in Communication

- After 3 March 2011, PFC Manning started to become withdrawn from the staff
- CWO2 Barnes threatened PFC Manning during a conversation, saying that anything he said or did could be used against him in sentencing
- After PFC Manning closed up, that perversely became a factor in maintaining PFC Manning on POI
- CWO2 Barnes fails to see that a detainee might not feel like building up a "rapport" with the jailor that just took his underwear away
- PFC Manning was not withdrawn with the doctors, the chasers, or his command

Visitation List

- CWO2 Barnes and the C&A Board used PFC Manning's removal of people from the visitation list against him
- Only three of the 18 people that he removed actually came to visit him
- Only reason he removed all 18 was because the mail clerk made him fill out a new DD 510 and put the names back on the form one-by-one
- CWO2 Barnes believed this was a "set up"
- CWO2 Barnes and the Board used the removal of names against PFC Manning in maintaining him in MAX and POI

Complaints

- Told command he did not understand why he was on POI - 10 August 2010 and consistently thereafter.
- Complained to his counselor, GySgt Blenis, who told him that it was the doctors who were keeping him on POI
- Complained to his attorney who tried to address the issue through MDW SJA in Fall of 2010.
- Filed a complaint with CWO4 Averhart through his attorney on 5 January 2011
- Filed a DD 510 on 7 January 2011

Complaints

- Complained to COL Coffman by way of R.C.M. 305(g) request
- Article 138 Complaint Filed on 19 January 2011
- Article 138 Rebuttal Filed on 10 March 2011 along with second complaint for actions of CWO2 Barnes
- Second Article 138 Rebuttal filed on 10 April 2011

Transfer to JRCF

- 20 April 2011
- LTC Hilton – objective process
  - No "not on my watch" mentality
  - Listens to her mental health professionals
  - PFC Manning is placed in MDI
  - MDI has ensured his presence at trial
- CPT Casamatta and 1SG Williams notice change in PFC Manning