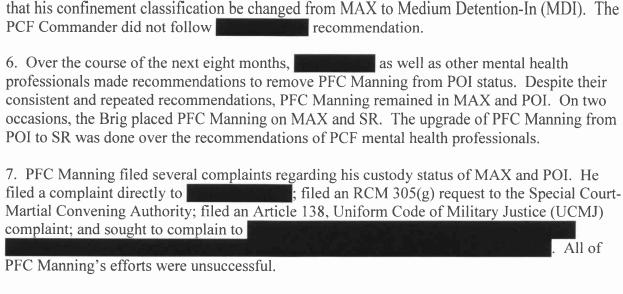
IN THE UNITED STATES ARMY FIRST JUDICIAL CIRCUIT

UNITED STATES) DEFENCE MOTION TO
V.	 DEFENSE MOTION TO COMPEL PRODUCTION OF WITNESSES AND EVIDENCE FOR ARTICLE 13 MOTION
MANNING, Bradley E., PFC U.S. Army, xxx-xx-9504 Headquarters and Headquarters Company, U.S. Army Garrison, Joint Base Myer-Henderson Hall, Fort Myer, VA 22211)))) DATED: 13 July 2012)
RELIEF SOU	GHT
1. PFC Bradley E. Manning, by and through counse for Courts Martial (RCM) 703(b)(1) and 703(f)(1), re the below listed witnesses and evidence.	
BACKGROU	JND
2. On 29 May 2010, PFC Manning was detained by Investigation Division (CID). The CID agents held I Operating Base Hammer, Iraq until he could be transfacility (TFCF) at Camp Arifjan, Kuwait. After 59 of the TFCF and arrived at Marine Corps Base Quantice (PCF) on 29 July 2010.	PFC Manning in a secured area on Forward ported to the Theater Field Confinement days, PFC Manning was transported from
3. Once at the MCBQ PCF, PFC Manning was placed the special handling instructions of Suicide Risk (SR weeks, PFC Manning was seen and treated by menta August 2010, one of these professionals, was no longer a suicide risk. Capt. Hocter recommendations Suicide Risk to Prevention of Injury (POI) status. On directed PFC Manning be mediated to the suicide Risk to Prevention of Injury (POI) status.). Over the course of the following few l health professionals at the PCF. On 6 determined that PFC Manning anded that PFC Manning be moved from
4. Over the course of the following three weeks, PFC and received regular treatment from the Brig psychia disciplinary reports or adverse spot evaluations; he wand was evaluated as an average detainee that present inmates.	trists. PFC Manning did not receive any vas respectful, courteous and well spoken;
	PFC Manning was no longer considered a FC Manning be taken off of POI status and



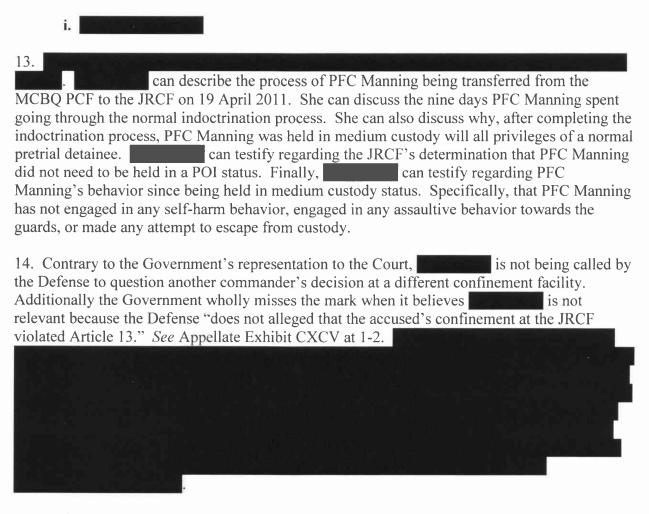
ARGUMENT

- 8. The Defense's Article 13, UCMJ, motion will be filed on 27 July 2012. Although the Court does not have the benefit of the Defense's motion, the underlying facts, and the supporting documentation at this time, the Defense nonetheless requests that the Court grant the Defense's motion to compel production of these witnesses because their testimony is relevant and necessary to the motion at issue.
- 9. The Defense has been eminently reasonable in its request for witnesses. It has only requested that a total of *seven* witnesses be produced in support of its motion. Given the duration of the unlawful pretrial punishment (approximately 8 months) and the number of witnesses that the Defense could potentially have called (several dozen), the Defense finds it disingenuous that the Government would resist production of these two witnesses. Lest it remind the Government, the Government plans on calling twenty-two witnesses from the Department of State alone.
- 10. The Defense should be entitled to present its theory or theories of pretrial punishment in the manner of its choosing. That the Government does not agree with the theory, or the evidence presented, is of no moment. The Government can ultimately argue that the evidence is not persuasive or does not convincingly support the Defense's argument. However, that does not mean that the Defense should not be entitled to present that evidence to the Court.
- 11. There is an asymmetry in the military justice system, whereby the Government can call any witness that it would like in support of its motions while the Defense must "run its witnesses by the Government" for the Government's approval. This must, of course, ultimately rest on the good faith of the prosecutor to not willy-nilly challenge Defense witnesses in order to: a) erect unnecessary hurdles for the Defense; and b) to use the challenges to flush out the Defense's theory before its time. Here, there was no reason for the Government to oppose production of these two particular witnesses. Their testimony is facially relevant to the unlawful pretrial punishment issue. Moreover, the Defense suspects that the Government will likely call at least

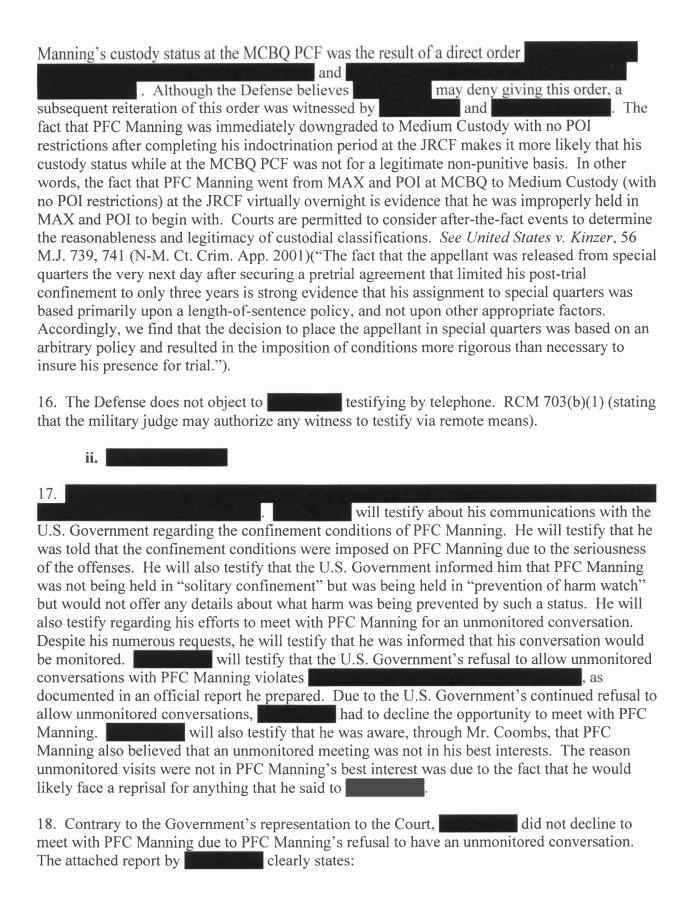
double the number of witnesses that the Defense has put on its witness list to rebut allegations of unlawful pretrial punishment. The stark imbalance cannot be tolerated.

A. The Government Must Produce All Witnesses and Evidence Relevant and Necessary to the Defense.

12. The Defense is entitled to production of witnesses whose testimony "would be relevant and necessary" to a matter in issue. RCM 703(b)(1). In determining relevance of the witness, a court must turn to the Military Rules of Evidence. See, e.g., United States v. Breeding, 44 M.J. 345, 351 (C.A.A.F. 1996). A witness is necessary when the witness is not cumulative, and when the witness would contribute to a party's presentation of the case in some positive way on a matter in issue." United States v. Credit, 8 M.J. 190, 193 (CMA 1980); see also United States v. Williams, 3 M.J. 239 (C.M.A. 1977).



15. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401. testimony is directly relevant to one aspect of the Defense's theory of why PFC Manning's confinement at the MCBQ PCF constituted unlawful pretrial punishment. The Defense will present evidence that PFC



The US Government authorized the visit but ascertained that it could not ensure that the conversation would not be monitored. Since a non-private conversation with an inmate would violate the terms of reference applied universally in fact-finding by

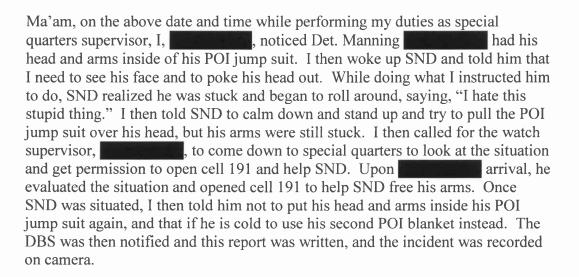
See Attachment A (emphasis added).

19. "Relevant evidence" means evidence having any tendency to make the existence of any fact
that is of consequence to the determination of the action more probable or less probable than it
would be without the evidence. MRE 401. testimony is directly relevant to
several aspects of the Defense's unlawful pretrial punishment argument. First, the Defense will
use testimony's to support its argument that PFC Manning was held under unduly
onerous confinement conditions owing solely to the seriousness of the charges against him.
Officials told that this was the primary reason for the onerous conditions of PFC
Manning's confinement. Second, the Defense will argue that the failure to allow PFC Manning
to have access to for an unmonitored visit where PFC Manning could freely discuss
the conditions of his confinement in the hopes of getting some type of reprieve from them itself
amounts to unlawful pretrial punishment. Because everyone at the MCBQ PCF was abiding by
unlawful order to not remove PFC Manning from MAX or POI, there was
nowhere for PFC Manning to go – other than outside the chain of command – to potentially get
relief. Case law has repeatedly emphasized the importance of the accused seeking out any and
all forms of relief in an Article 13 claim. The failure to permit PFC Manning an unmonitored
visit with the was designed to cover up from public view the
wrongs that were being perpetrated at MCBQ. Extensive documentation will be introduced
showing how brig rules were being deliberately read in an absurd manner (by both the
Government and officials at MCBQ) in order to deny visit. Third,
will testify that the Government's refusal to allow unmonitored visits was surprising to him and
was in violation of will also testify generally about his
knowledge of solitary confinement being in violation of the confinement. The Defense believes
that testimony regarding speaks to the issue of whether there
was pretrial punishment and also speaks to the appropriate remedy for such punishment (i.e.
conduct that is so egregious that it rises to the level of a violation of warrants a
greater remedy than a simple breach, say, of brig regulations).
20. has volunteered to testify. He resides in the second and would not
present a significant cost to the Government nor would his presence result in a delay in the
proceedings.
Frank Co.

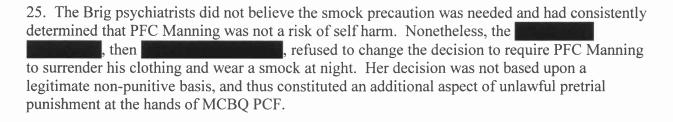
ii. Requested Evidence

21. The Defense has requested that the Government produce three pieces of evidence for the Court's consideration: the issued suicide prevention smock, suicide prevention blanket, and suicide prevention mattress. RCM 703(f)(4)(A). Each piece of requested evidence can be obtained from MCBQ.

- 22. The requested evidence is directly relevant to the defense's theory of why PFC Manning's confinement at the MCBQ PCF constituted unlawful pretrial punishment. Each piece of evidence will independently demonstrate an aspect of the onerous conditions PFC Manning was unnecessarily subjected to while at MCBQ PCF. The requested evidence will also demonstrate how PFC Manning was held under conditions more rigorous than necessary to ensure his presence for trial. PFC Manning was subjected to each of the requested evidentiary items due to the MCBQ PCF's determination to hold him either on SR or POI status from 29 July 2010 to 19 April 2011.
- 23. Shortly after the deciding to strip PFC Manning of all of his clothing at night on 2 March 2011 (something that the Defense submits itself amount to unlawful punishment), the MCBQ PCF decided to require PFC Manning to wear a suicide prevention article of clothing called a "smock" at night. Due to PFC Manning's size and the coarseness of the smock, he had difficulty sleeping. The suicide smock that he was required to wear was not designed for someone of his size. It is important for the Court to see the smock in relations to PFC Manning's size to assess the reasonableness of this restriction.
- 24. Additionally, the smock itself posed a risk of harm to PFC Manning. On one occasion, PFC Manning got trapped inside the smock. The situation is explained in an Incident Report on 13 March 2011:



See Attachment B.



- 26. PFC Manning was also not allowed to have a pillow or sheets. Instead he was provided with a suicide prevention mattress with a built-in pillow and a tear proof suicide prevention blanket. The provided mattress was uncomfortable and difficult for PFC Manning to sleep on. Additionally, the suicide prevention blanket was coarse and would frequently cause either a rash or a burn to PFC Manning's skin. As with the suicide smock, the Brig psychiatrists did not believe the suicide prevention measures of the mattress and tear proof blanket were necessary.
- 27. Contrary to the Government's representation to the Court, a picture of the above requested items will not be sufficient for the Court to "understand its purpose, limitations, or possible effect." *See* Appellate Exhibit CXCV at 2. The requested evidence is under the control of the Government. The requested production is not unreasonable or oppressive. As such, the Defense's request should be granted.

CONCLUSION

28. For the above reasons, the Defense requests this Court compel production of the above listed witnesses and evidence.

Respectfully submitted,

DAVID EDWARD COOMBS Civilian Defense Counsel