BENGOSHI 弁護士

Volume III Issue II

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Featured Articles

Preventative Law Series

The Bengoshi, which means "lawyer" in Japanese, is designed as a means to educate and inform fleet leaders, legal officers, and others in the Indo-Pacific area of responsibility who might have an interest in the complex legal issues that uniquely impact those who serve here. This issue takes a deep dive into freedom of navigation, an issue highly relevant to the Free and Open Indo-Pacific. Our articles discuss:

- Excessive Russian maritime claims and the long history of Freedom of Navigation operations against Russia.
- The legal status of synthetic steroids in Japan and in the Navy.
- The history of bread and water as a Navy punishment.
- Taking action on NJP punishments post-award.
- Military members becoming U.S. citizens while stationed in Japan.
- Tools for commands to ensure compliance with the Gun Control Act, especially in drug abuse NJPs and ADSEPs.

These topics are thoroughly explored by our exceptional team of legal professionals in this edition of the Bengoshi!

CAPT Flo Yuzon, JAGC, USN
Commanding Officer
RLSO Japan

HISTORY OF U.S. FREEDOM OF NAVIGATION OPERATIONS ON RUSSIAN EXCESSIVE MARITIME CLAIMS

LT Clinton Barker, JAGC, USN

Readers are likely familiar with excessive Chinese maritime claims in the South China Sea. But China is hardly the only nation in the Indo-Pacific claiming more rights than are allowed under international law. This was highlighted on December 5, 2018 when, according to a U.S. Pacific Fleet statement, "[G]uided-missile destroyer USS MCCAMPBELL (DDG 85) conducted a freedom of navigation operation (FONOP) in the Sea of Japan. MCCAMPBELL sailed in the vicinity of Peter the Great Bay to challenge Russia's excessive maritime claims and uphold the rights, freedoms, and lawful uses of the sea enjoyed by the United States and other Nations."[1]

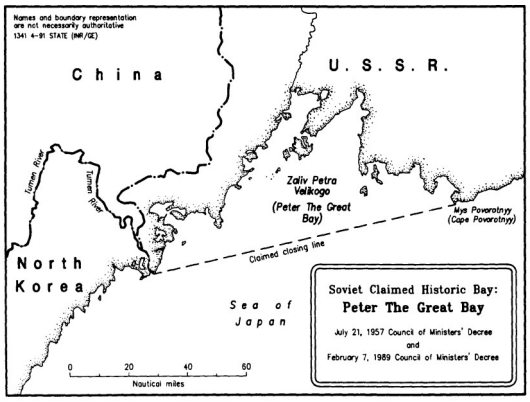

Image: Public Domain

Russia's excessive claims in Peter the Great Bay began in 1957. The Soviet Union declared a closing line across the bay that claimed all the waters of the bay as Soviet internal waters, as well as a twelve nautical mile territorial sea extending seaward from the closing line.[2] International law allows for closing lines of up to twenty-four nautical miles only if the bay contains a sufficient area of water relative to the proposed closing line.[3] Peter the Great Bay, however, contains far too little area, and the Soviet line was more than 100 nautical miles long. As a result, the Soviet Union instead claimed Peter the Great Bay as a "historic bay," exempt from such rules under international law.[4] This designation has drawn protests from the United States, the United Kingdom, Japan, France, Canada, and Sweden.[5] The United States contested the excessive Soviet claims over Peter the Great Bay with FONOPs by USS LOCKWOOD (FF 1064) in 1982 and USS OLENDORF (DD 972) in 1987.[6]

The excessive closing line drawn across Peter the Great Bay is not the only type of excessive maritime claim that the United States challenges. During the Cold War, the U.S. Navy also challenged a Soviet restriction on the right of innocent passage in the Black Sea.[7] International law allows ships to travel in the territorial seas of other nations under certain restrictions. However, during the Cold War, the Soviet Union imposed an absolute restriction on foreign warships entering their territorial seas, even when those warships did not violate international law when transiting.[8] In response, the United States sent USS CARON (DD 970) and USS YORKTOWN (CG 48) together in FONOPs in 1986 and in 1988.[9] In the second FONOP, two Soviet warships responded by colliding with CARON and YORKTOWN , in what is now known as the "Black Sea Bumping."[10]

Following the "Black Sea Bumping," the United States and Soviet Union negotiated and issued a joint statement in 1989 on innocent passage. This joint statement reflected the shared interests of the two seagoing nations.[11] Recognizing that it too would benefit from a legal regime that allows for the innocent passage of warships, the Soviet Union agreed to a joint statement declaring warships eligible for innocent passage through territorial seas and committed to resolving further differences through negotiation rather than aggressive acts.[12]

History of U.S. Freedom of Navigation Operations on Russian Excessive maritime Claims

LT Clinton Barker, JAGC, USN

That agreement resolved many of our disagreements on freedom of navigation, but the Soviet Union's claim on Peter the Great Bay remained. When the Soviet Union dissolved, Russia inherited its excessive maritime claims and continues to assert them.

When USS MCCAMPBELL entered the vicinity of Peter the Great Bay on December 5, it was the first FONOP targeting Russia's excessive maritime claims since 1988, and the first in the area since 1987. However, this operational pause does not indicate a reluctance to operate in unlawfully claimed waters. According to U.S. Pacific Fleet, "U.S. Forces operate in the Indo-Pacific region on a daily basis. These operations demonstrate the United States will fly, sail and operate wherever international law allows. That is true in the Sea of Japan, as in other places around the globe. We conduct routine and regular freedom of navigation operations, as we have done in the past and will continue to do in the future."[13] True to this promise, USS MCCAMPBELL conducted another FONOP in January near the Paracel Islands to contest China's requirement for warships to give prior notice before conducting innocent passage.[14] It remains to be seen whether China is willing, as the Soviet Union was, to recognize our shared interests in the freedom of navigation under international law.

"Black Sea Bumping": Public Domain

[1] U.S. Pacific Fleet Statement, 5 Dec. 2018.

[2] U.S. Department of State, Office of Ocean Affairs, *Limits in the Seas* No. 112, "United States Responses to Excessive National Maritime Claims," 9 Mar., 1992.

[3] United Nations Convention on the Law of the Sea (UNCLOS), Art. 10.

[4] U.S. Department of State, Office of Ocean Law and Policy, *Limits in the Seas* No. 107, "Straight Baselines: U.S.S.R.," 30 Sep. 1987.

[5] *Limits in the Seas* No. 112.

[6] Annotated Supplement to the Commander's Handbook on the Law of Naval Operations (NWP 1-14M), 15 Nov. 1997.

[7] *Limits in the Seas* No. 112.

[8] *Id.*; UNCLOS Arts. 17–19.

[9] *Limits in the Seas* No. 112.

[10] *Id.*

[11] Union of Soviet Socialist Republics–United States: Joint Statement with attached Uniform Interpretation of Rules of International Law Governing Innocent Passage, Jackson Hole, Wyoming, 23 Sep. 1989.

[12] *Id.*

[13] U.S. Pacific Fleet Statement, 5 Dec. 2018.

[14] U.S. Pacific Fleet Statement, 7 Jan. 2019.

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Synthetic Steroids: Navy Process for a Complicated Compound

LN1 Ryan Pickens, USN

Steroid abuse is all-too common throughout our military, but not tested for as often as we expect. Like many other banned substances, companies are creative in producing alternatives and labeling them as "legal steroids." Oftentimes, these substances have the same harmful side effects as known steroids, if not worse, due to the lack of research done into the performance enhancing drugs (PEDs) companies are putting into these "creative alternatives."

Background. Prohormones were the first craze in the PED realm from the mid-1990s to mid-2000s. In order to circumvent the restrictions on the sale and use of anabolic steroids, companies created different compounds and marketed these as supplements. Some of these supplements are "precursor steroids," meaning these supplements are differentiated from anabolic steroids by only one chemical. In other instances, some of these "supplements" were actually true steroid compounds. Jose Canseco, one of the first athletes to admit he took steroids, named multiple major league baseball players who used PEDs. The public concern which ensued led to the Designer Steroid Control Act of 2014, signed by President Barak Obama on December 1, 2014. The Designer Steroid Control Act included more designer steroids under the definition of and restrictions on anabolic steroids.[1]

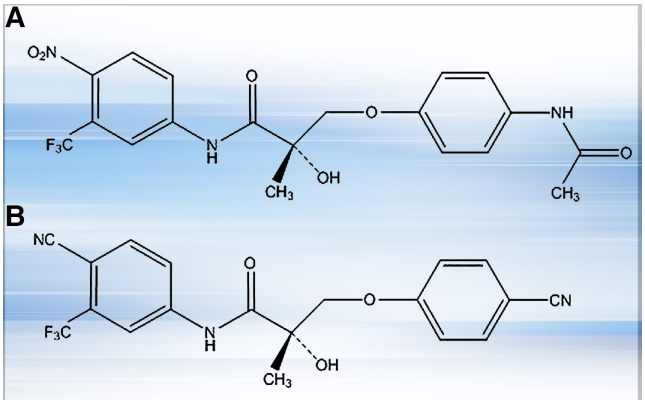

Image: Public Domain

New synthetic steroids. However, companies are already finding ways to create an alternative to the alternative. The most common new option is called peptides or Selective Androgen Receptor Modulator (SARM). SARMs, including Ostarine, are synthetic drugs designed to mimic the effects of testosterone. These synthetic drugs are still in the research and testing stages of development, and are not available for consumer use. The problem is that you can get SARMs as ingredients in dietary supplement products or purchase them as chemicals available for "research only." The Food and Drug Administration (FDA) states that "bodybuilding products that contain SARMs have not been approved and are associated with serious safety concerns." While they are illegal in dietary supplements and prohibited from professional sports, SARMs have not been classified as a scheduled controlled substance. However, Congress is considering legislation that would place them on the controlled substances list.[2]

Legality of steroids and synthetic steroids in Japan. Anabolic and synthetic steroids are not illegal in Japan. Furthermore, anabolic steroids are not listed as contraband in Japan's three major drug control laws (Narcotics and Psychotropics Control Act, Stimulants Control Act, and the Cannabis Control Act).

Synthetic Steroids: Navy Process for a Complicated Compound

LN1 Ryan Pickens, USN

The legality of anabolic and synthetic steroids in Japan is in stark contrast with the Navy's Alcohol and Drug Abuse Prevention and Control policy as articulated in OPNAVINST 5350.4D. Given the relative ease of obtaining anabolic or synthetic steroids while in Japan, it is imperative that commands clearly articulate to personnel the potential criminal and administrative consequences which could result from use of either anabolic or synthetic steroids.

Navy Process

The purchase of SARMs by a U.S. Navy Sailor does not fall under Article 112a of the UCMJ because it is neither an enumerated drug nor on a schedule of the Controlled Substances Act. Further, SARMS are not currently tested for in routine Navy urinalysis. However, that does not mean that the use of SARMs is safe or authorized for Sailors. Pursuant to OPNAVINST 5350.4D, "[d]rug abuse is also the…illicit use of anabolic steroids…Violation of this provision may subject Navy military members to disciplinary action…"[3] Anabolic steroids are further defined as "any drug or hormonal substance, chemically and pharmacologically related to testosterone…"[4] Urinalysis testing for steroids can be specifically requested from the Navy Drug Screening Lab.

Testing. The process of obtaining authorization for steroid testing is straight forward. Commands may authorize the collection of a urine sample when steroids are suspected – there is no need for higher approval. However, commands must request permission to submit samples for testing.

The steps for testing are as follows:

1. If a Commanding Officer determines there is probable cause of steroid use he or she may collect urinalysis samples.[5] The command should use a Permissive Authorization for Search and Seizure (PASS) or a Command Authorized Search and Seizure (CASS) form.

2. Determine what premise code applies.[6] For instance, if commands suspect SARM use, choosing the correct premise code for urinalysis will establish the appropriate disciplinary action, basis for separation, and characterization of discharge.

3. Collect a urine sample. A minimum of 60 ml must be submitted for steroid testing. A minimum of 75 ml must be submitted if the command is also requesting testing against the standard DoD drug testing panel. For accurate results, indicate the DEERS gender marker for the provider of each specimen as "M" for male and "F" for female on the accompanying DD 2624. This indication may be hand written.

4. Email a request explaining the circumstances of suspected use and the PASS or CASS urinalysis to MILL_DTADMIN@navy.mil. Ensure there is no personally identifiable information (PII) and OPNAV will authorize the sample to be tested at the lab.[7]

5. Forward specimen(s) for steroid testing to NDSL Great Lakes. Include a written request for

Synthetic Steroids: Navy Process for a Complicated Compound

LN1 Ryan Pickens, USN

steroid testing on command letterhead with the submitted specimen(s). The command should provide a reasonable explanation of why the servicemember was tested for steroids. Expect results in about eight weeks.

NJP. As discussed earlier, a positive urinalysis result for SARMs does not support a charge under Article 112a of the UCMJ. However, using SARMs and other synthetic steroids can be charged as a violation of OPNAVINST 5350.4D, the Navy's instruction on Alcohol and Drug Abuse Prevention and Control. Violation of OPNAVINST 5340.4D is chargeable under Art. 92 of the UCMJ.

Separation. Violation of OPNAVINST 5350.4D constitutes a commission of a serious offense and allows for separation under MILPERSMAN 1910-142. If the circumstances indicate the Sailor consumed the synthetic steroids "to induce intoxication, excitement, or stupefaction of the central nervous system," MILPERSMAN 1910-233, states this is a mandatory basis for separation. Separation under MILPERSMAN 1910-146, Drug Abuse, is not the best option for SARMs and other synthetic steroids because the text of the MILPERSMAN limits it to controlled substances.

Commands should anticipate that ADSEP boards based on SARM use will be highly technical, with the defense presenting argument on whether the substance used was in fact "pharmacologically related" to testosterone and other scientific topics. Legal Officers are encouraged to consult with the RLSO early to help prepare for such cases. The Navy Drug Screening Labs also offer expert witnesses who may be helpful in complex cases.

[1] https://www.govtrack.us/congress/bills/113/hr4771/text/rfs#link=2_a_2_~Q1_C_i&nearest=HC212D296FC2C40CDA20A81C11848CE33

[2] The "SARMs Control Act of 2018" is currently being considered by Congress. It would classify a SARM or Peptide as an anabolic steroid per the U.S. Federal Controlled Substance Act (CSA) schedules.

[3] OPNAVINST 5350.4D, Enclosure (2), paragraph 1.

[4] OPNAVINST 5350.4D, Enclosure (4).

[5] OPNAVINST 5350.4D, Enclosure (2).

[6] OPNAVINST 5350.4D, Enclosure (2) paragraph 4 provides the premise codes. A premise code is a code attributed to a specimen based on the reason the urine test is being conducted. Tests conducted with member's consent (VO) or probable cause tests (PO) will offer the least resistance in the course of action to be taken after results are received.

[7] Navy Drug Screening Labs website: https://admin.med.navy.mil/sites/nmcphc/navy-drug-screening-labs/Documents/steroid-testing-v2.pdf.

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A Historical Look at the Origins of Bread and Water

LN1 Nathaniel Bird, USN

An archaic practice from the 19th century days of sailing vessels; the punishment of confinement on bread and water (in some eras with the addition of iron shackles) has stirred much debate. Regarded as a joke punishment for some, a 72-hour nightmare for others, the history of "bread and water" is deeply seated in the history of the Navy. However, on January 1, 2019, the United States Navy officially abolished the practice as proscribed by the Military Justice Act of 2016.[1]

In the British Royal Navy, confinement on bread and water was usually given as punishment for sleeping while on watch. The punishment for a first-time offender would be having a bucket of sea water poured on the offender. A second-time offender would have his hands tied over his head and seawater poured down his sleeves. A third time offender would be tied to the mast of the ship, where the Captain could flog him and inflict as much pain as he desired. If there was a fourth offense, the offender would be placed in a basket and hung below the bowsprit with nothing but a loaf of bread, a mug of ale, and a sharp knife. If the offender escaped from the basket, an armed sentry was waiting to ensure the offender did not return aboard. [2]

Image: Public Domain

While the Royal Navy ceased issuing bread and water as authorized punishment in 1891, the U.S. Navy nevertheless continued on with the practice, albeit with less lethality. The 1951 edition of the Manual for Courts-Martial provides:

Confinement on bread and water has been used by the Navy for some time. It is new to the Army and Air Force and at the Congressional hearings it was indicated that the Army and Air Force did not desire to employ this kind of punishment. The Navy, on the other hand, had a point of great merit in the fact that restriction, to a man on a vessel at sea, was hardly a punishment and some special type of confinement or other punishment might be necessary in some cases for the sake of discipline. The law was therefore written so punishments of the nature described may be imposed upon any military person while embarked in a vessel.

In Memoriam: A Historical Look at the Origins of Bread and Water

LN1 Nathaniel Bird, USN

Over 60 years after the creation of the Uniform Code of Military Justice, which formalized the naval practice of confinement on bread and water, guidance for the imposition of the punishment was set forth in BUPERSINST 1640.22, dated March 29, 2011:[3]

a. Bread and Water (B&W)

(1) Authorized by reference (b), article 15, and may be imposed upon any enlisted person within pay grade E-3 or below attached to or embarked in a vessel. Confinement on B&W shall not be imposed for more than three consecutive days.

(a) Rations furnished to a prisoner undergoing confinement on B&W shall consist solely of bread and water. The amount of bread and water shall not be restricted and shall be served three times daily at the normal time of meals.

(b) B&W may be imposed provided the medical officer pre-certifies in writing that a deterioration of the Service member's health is not anticipated as a result of such action.

(c) Service members serving punishment of B&W shall be confined in a cell and shall be bound by the procedures set forth for a prisoner in a disciplinary segregation (DS) status. They shall not be removed for work or physical exercise.

(d) Good conduct time is not credited for B&W punishment.

While originally touted as a more humane alternative to flogging at the ship's mast in earlier centuries, bread and water has long received varying levels of scrutiny. In fact, attempts by the Secretary of the Navy to abolish the practice can be found in the Congressional Record dating back as far as 1882. In 1909, the U.S. Navy changed the number of days one could be confined on bread and water from thirty days to seven days, and removed the authority of Commanding Officers to have Sailors placed in shackles while serving the punishment.

While confinement on bread and water is no longer a part of our Navy, the lessons and history of its use should be remembered by all. The time and place for Commanding Officers of vessels to order confinement on bread and water as a tool to ensure good order and discipline has passed, and leaders must apply new and different techniques to maintain the effectiveness of their commands.

[1] Pl. L. No. 114-328 Sec. 5141

[2] https://www.hmsrichmond.org/avast/customs.html

[3] BUPERSINST 1640.22, Enclosure (1), Section 1. Confinement

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Preventative Law Series: Navigating Post-NJP Actions

LT John Kelley, JAGC, USN

Navigating post-nonjudicial punishment (NJP) actions is understandably confusing. It is important to handle modifications to punishment correctly at the command level to ensure compliance with servicemembers' due process rights. Keep in mind that, for many actions, a command must have an articulated reason for changing the punishment, such as a demonstrated conduct improvement or a determination that the punishment resulted in clear injustice. If a valid reason exists, there are four courses of action that NJP authorities or their successors in command can take under the Uniform Code of Military Justice (UCMJ) Article 15, paragraph 6: suspension, mitigation, remission, and a set aside.

- Suspension. Suspension is delaying the execution of punishment for up to 6 months, on the condition that the servicemember not commit further violations of any punitive article of the UCMJ during the specified period. If the servicemember satisfies the condition, the punishment is never executed. Under UCMJ Article 15, paragraph 6(a), the NJP authority who imposed the punishment (or their successor) can unilaterally decide to suspend punishment. This can be confusing, because MILPERSMAN 1430-020 provides another mechanism for reinstatement or restoration in rate after being reduced by one pay grade at NJP. This MILPERSMAN section is sometimes interpreted as setting the additional requirement that a servicemember must initiate a suspension request, but this is not the case. Under the UCMJ, the NJP authority can initiate a suspension on their own without needing approval from the Bureau of Naval Personnel (BUPERS) or Personnel Support Detachment (PSD), and without receiving a servicemember request for reinstatement or restoration in rate. The main difference between Article 15 and MILPERSMAN authorities for reduction in rate is that Article 15 authority may only be used within 4 months after punishment, whereas MILPERSMAN authority may not be effected earlier than 6 months from imposition of NJP for rates E-2 through E-4, and 12 months for E-5 through E-6.
- Mitigation. Mitigation means reducing the quantity or quality of a punishment. If a servicemember's later good conduct or marked improvement merits reduction of punishment (or if punishment is deemed disproportionate), the NJP authority can mitigate at any point during the course of the punishment. The one exception involves reduction in grade, which must be mitigated to reduction in pay within 4 months after the date of execution. Also, keep in mind that punishment cannot be mitigated for a longer period than the punishment being mitigated. For example, 5 days of arrest in quarters cannot be mitigated to 10 days of restriction. Reductions can be mitigated to forfeiture of pay, but the combined forfeitures from the NJP and the mitigation cannot exceed the NJP authority's maximum forfeiture amount.
- Remission. Remission is the cancellation of any portion of unexecuted punishment. It is not as common as mitigation, but it applies in the same situations in which mitigation would be

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Preventive Law Series: Military Naturalization Process in Japan

Ms. Kazumi Takahara, Japanese Legal Advisor, Legal Assistance Dept.

Supporting Sailors to become U.S. citizens is a priority for the Navy. MILPERSMAN 5352-010 provides the responsibilities of the command in the naturalization process. Each command must designate a Command Citizenship Representative (CCR) and assist non-U.S. citizen Sailors with their naturalization applications.

The naturalization process for Sailors in Japan starts by mailing a complete naturalization application packet to the U.S. Citizenship and Immigration Services (USCIS) office in Chicago. Once the application is processed stateside, it is forwarded to USCIS Seoul Field Office to be finalized. On March 12, 2019, USCIS announced the agency is seeking to close all of its international field offices. At this time it is uncertain how the closure of USCIS Seoul Field Office will affect the current military naturalization process; however, RLSO Japan is ready to assist Sailors and work with commands to help non-U.S. citizen Sailors become U.S. citizens.

6 December 2018, Commander, Fleet Activities Yokosuka Naturalization Ceremony

USCIS Seoul Field Office representatives visit Commander Fleet Activities Yokosuka (CFAY) approximately three times a year to conduct naturalization interviews and ceremonies. They also visit military installations in Okinawa and Sasebo. In order to complete the naturalization process candidates must pass their interviews and participate in the oath ceremony. There is no passing score for the interview, but candidates must demonstrate good moral character, knowledge of the English language, and knowledge of U.S. government and history. Additionally, the taking of the oath is quite significant because it demonstrates an attachment to the principles of the U.S. Constitution.

Due to operational commitments, some Sailors may be deployed when their naturalization interviews are scheduled. Paragraph 8 of MILPERSMAN 5352-010 states it is the policy of the Secretary of Defense to prioritize emergency leave and transportation on military aircraft in order for Sailors to finalize the naturalization process. Rest and Recuperation leave may also be granted when Sailors receive written notification from USCIS requesting their appearance for a naturalization interview.

On December 6, 2018, Region Legal Service Office (RLSO) Japan hosted a naturalization ceremony. This ceremony was a great example of commands providing necessary and timely support to their Sailors. Eighteen out of the twenty-one candidates were attached to deployed units that were not due to return to Yokosuka prior to their Sailor's interview dates. Those Sailors were flown off their ships early or were placed in the first groups to

Preventive Law Series: Military Naturalization Process in Japan

Ms. Kazumi Takahara, Japanese Legal Advisor, Legal Assistance Dept.

disembark their ships after mooring in order to make their naturalization interviews. As a result, on December 6, 2018, 16 Sailors, attached to deployed units, became U.S. citizens. One deployed Sailor completed the naturalization process two weeks later during her ship's port visit, which coincided with USCIS's Sasebo visit.

Many of the newly naturalized Sailors submitted their naturalization applications over a year ago, some started the process while in boot camp. All waited anxiously for the day to come in which they would proudly take the oath and complete the naturalization process. Each of these Sailors were extremely appreciative of their commands and the RLSO's support during this lengthy process.

After completing the naturalization process these Sailors can now obtain security clearances and enjoy increased opportunities for job assignments and locations. They are also able to sponsor members of their immediate family to immigrate to the United States. Naturalization has a positive effect on military operational readiness, morale, retention, and diversity within the ranks.

If a command has any questions regarding the process, please contact the Naturalization Area Coordinator in the legal office in your area of responsibility:

- RLSO Japan Legal Assistance Department at 243-5142
- RLSO Branch Office Sasebo Legal Assistance Department at 252-2116
- RLSO Branch Office Guam Legal Assistance Department at 339-6066
- RLSO Branch Office Okinawa at 634-8255
- RLSO Branch Office Misawa at 226-4095
- RLSO Branch Office Singapore at 421-2305
- RLSO Branch Office Diego Garcia at 370-2922

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Preventative Law Series: Navigating Post-NJP Actions

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- appropriate – good conduct or disproportionate punishment. The NJP authority or successor in command may remit punishment at any time, although the expiration of a current enlistment or term of service automatically remits any unexecuted punishment awarded at NJP.
- Setting Aside. Put simply, setting aside means acting as if the NJP never happened. It can be applied to the entire NJP, or just a portion of the punishment. The action is retroactive, meaning the servicemember is entitled to backpay. This rare course of action only occurs in cases in which the punishment has resulted in "clear injustice." Often this occurs when newly-discovered evidence shows that the guilty finding was in error. The action of setting aside an NJP is governed by the UCMJ and MILPERSMAN 5812-010. An NJP set aside is initiated at the command level but a letter of notification must be routed to BUPERS. BUPERS then removes the NJP and all associated punishments from the servicemember's record, and the servicemember is restored all property, privileges, and rights lost as a result of the NJP.

This brief rundown of post-NJP punishment adjustment options is just a starting point. If your command is considering action of this nature, consult your SJA for further guidance and clarification.

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Preventative Law Series: Additional Tools for Gun Control Act Compliance

LCDR Christian Colburn, JAGC, USN

2018 saw great emphasis on shoring up Navy reporting of crimes to federal databases. These fall into two broad categories: Those which require reporting for gun control purposes and those which require fingerprinting. The requirements for each are independent.

Gun Control: This past January, RLSO Japan published a legal officer guide on reporting requirements for the Gun Control Act of 1968. The two main triggers of concern for commanders are drug offenses and "fugitives from justice" (unauthorized absence for the purpose of avoiding prosecution or giving testimony). A sailor who triggers the Gun Control Act due to drug use is prohibited from possessing firearms for personal purposes for 12 months (official purposes are excepted). RLSO Japan also published a guide for DAPAs containing sample language for documenting drug use in ADMITs and sample Page 13s to issue to sailors who may no longer possess firearms.

Fingerprinting: Ideally, individual commands will not frequently have to send sailors for fingerprinting. DoDI 5505.11, enclosure (2) contains a long list of UCMJ violations for which fingerprinting is required. However, *fingerprinting is only required if the crime is investigated by base or local police*. Fingerprinting is not required for local command investigations. Commands with questions on fingerprinting requirements should contact the command services department at 243-6523.

Correction: An article in Bengoshi Volume III, Issue I incorrectly stated that the crimes in DoDI 5505.11 trigger Gun Control Act reporting. In fact, DoDI 5505.11 applies only to fingerprinting.

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RESULTS OF TRIAL

November 2018:

At a General Court-Martial in Yokosuka, Japan, AO2 Steven J. Garcia, USN, pled guilty pursuant to a pretrial agreement to a false official statement, assault consummated by a battery and aggravated assault. On November 14, 2018, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 24 months. The pretrial agreement had no effect on his sentence.

December 2018:

At a Special Court-Martial in Yokosuka, Japan, MMN2 Ethan Strandberg, USN, pled guilty pursuant to a pretrial agreement to conspiracy and distribution of a Schedule I controlled substance. On December 7, 2018, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 180 days. Pursuant to the pretrial agreement, the Bad Conduct Discharge and all confinement greater than 60 days will be suspended. The suspended punishment may be served if the Service Member violates the terms of the pretrial agreement. The pretrial agreement contained a waiver of the accused's administrative separation board.

At a Special Court-Martial in Yokosuka, Japan, MMN2 Andrew Miller, USN, pled guilty pursuant to a pretrial agreement to distribution of lysergic acid diethylamide (LSD). On December 13, 2018, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 120 days. Pursuant to the pretrial agreement, the Bad Conduct Discharge and all confinement in excess of 30 days will be suspended. The suspended punishment may be served if the Service Member violates the terms of the pretrial agreement. The pretrial agreement contained a waiver of the accused's administrative separation board.

January 2019:

At a Special Court-Martial in Yokosuka, Japan, MMN3 Philip Colegrove, USN, pled guilty pursuant to a pretrial agreement to introduction with intent to distribute a Schedule I controlled substance and distribution of multiple schedule I controlled substances. On January 14, 2019, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 10 months. Pursuant to the pretrial agreement, all confinement greater than 9 months will be suspended.

RESULTS OF TRIAL

February 2019:

At a General Court-Martial in Yokosuka, Japan, BM3 Jonathan Guerrerodoggett, USN, pled guilty pursuant to a pretrial agreement to three specifications of violation of lawful regulations by wrongfully distributing intimate images of another, two specifications of assault consummated by a battery, one specification of aggravated assault, and one specification of showing an intimate image to a third party. On February 22, 2019, the military judge sentenced him to be discharged with a Dishonorable Discharge, reduction in rate to paygrade E-1 and confinement for five years. Pursuant to the pretrial agreement, the Dishonorable Discharge will be reduced to a Bad Conduct Discharge and all confinement greater than 42 months is to be suspended. The suspended punishment may be served if the Service Member violates the terms of the pretrial agreement.

At a Special Court-Martial in Yokosuka, Japan, EMN2 Sean Gevero, USN, pled guilty pursuant to a pretrial agreement to one specification of possession with intent to distribute lysergic acid diethylamide and one specification of wrongfully possessing a Schedule III controlled substance. On February 14, 2019, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 90 days. Pursuant to the pretrial agreement, the Bad Conduct Discharge is to be suspended. The suspended punishment may be served if the Service Member violates the terms of the pretrial agreement. The pretrial agreement contained a waiver of the accused's administrative separation board.

At a Special Court-Martial in Yokosuka, Japan, AG2 Eddie Pitts, USN, pled guilty pursuant to a pretrial agreement to one specification of an assault consummated by a battery. On February 21, 2019, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 180 days. Pursuant to the pretrial agreement, the Bad Conduct Discharge will be disapproved and all confinement greater than 120 days will be suspended. The suspended punishment may be served if the Service Member violates the terms of the pretrial agreement. The pretrial agreement contained a waiver of the accused's administrative separation board.

RESULTS OF TRIAL

March 2019:

At a General Court-Martial in Okinawa, Japan, OS2 Allen Jewell, USN, was tried for attempted rape of a child, attempted sexual abuse of a child, attempted enticement of a minor to engage in sexual activity, and indecent language. On March 1, 2019, a panel of members returned a verdict of guilty to all charges and specifications. The panel sentenced him to be discharged with a Dishonorable Discharge, reduction in rank to E-1, to forfeit all pay and allowances, and confinement for 5 years.

At a General Court-Martial in Yokosuka, Japan, an E-4 was tried for sexual assault and abusive sexual contact. On March 6, 2019, a panel of members returned a verdict of not guilty

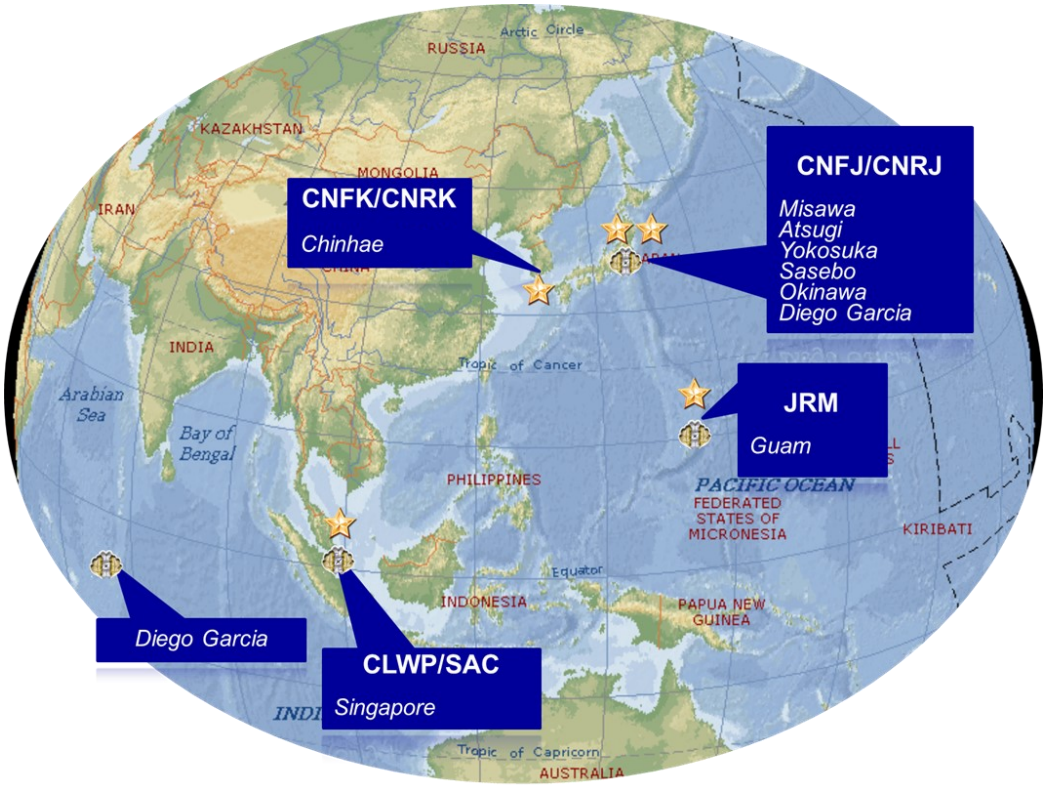
At a General Court-Martial in Yokosuka, Japan, HM1 Diego Davilanarvaez, USN, pled guilty to a pre-trial agreement to making a false official statement, larceny, and patronizing a prostitute. On March 22, 2019, the military judge sentenced him to be discharged with a Dishonorable Discharge, reduction in rate to E-1 and confinement for 3 years. Pursuant to the pretrial agreement, any confinement greater than 18 months will be suspended. The suspended confinement may be served if the Service Member violates the terms of the pretrial agreement.

At a General Court-Martial in Yokosuka, Japan, an E-5 was tried for rape and sexual assault. On March 28, 2019, a panel of members returned a verdict of not guilty.

At a Special Court-Martial in Yokosuka, Japan, HN Joshua Eoff, USN, pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On March 13, 2019, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rate to E-1 and confinement for 127 days. The pretrial agreement had no effect on his sentence.

CONTACT INFORMATION

Your Nearest Legal Advisors



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