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Officer Detachment for Cause: When is it Appropriate and How is it Done?

By LT Ingrid Paige, Deputy SJA, COMLOGWESTPAC

“I want this guy outta here!” Maybe you have heard it from a CO, or have said it yourself. The following is a brief primer on the do’s and don’ts of getting an officer removed from command or position of authority. As you will see, Detachment for Cause is not always appropriate. If it is, it’s important that it be done right.

First, let’s discuss the term, “Detachment for Cause” (DFC). A Detachment for Cause is a complex procedure that must be ap-

proved by Commander, navy Personnel Command. It is not a description of someone who was merely relieved from his or her position, or of someone who was sent TAD/TDY to another command.

When a command calls and says they want to “DFC” someone, SJAs should find out what they mean and their desired end state. If the command simply wants that person out of his or her position, they can relieve the officer and send him or her to another department or division. If they want that person out of the command, they may be able to send the officer TAD/TDY to another command.

Commands do not have to request a DFC in order to remove the officer from his or her position.

DFC is not a substitute for the disciplinary process and is only appropriate when the misconduct or substandard performance is serious enough to end an officer’s career. If that decision is made, go to MILPERSMAN 1611-020 as your guidebook. It takes you through the process step-by-step.

If the command is contemplating DFC in response to particular misconduct, or pattern of substandard performance, they should first take disciplinary or administrative action in order to document the officer’s case.

Conduct Unbecoming an Officer

By CAPT Dom Flatt
CO, RLSO Japan RLSO

Japan’s Yokosuka courtroom recently served as the venue for the court-martial of a Lieutenant Commander who was convicted of attempted sexual assault and abuse of a child. He was sentenced to a dismissal (punitive discharge) and three years of confinement for these offenses. He

was also originally charged with conduct unbecoming an officer and gentleman. As a matter of law, this charge, while arguably superfluous, was appropriate; whenever an officer is charged with any offense under the UCMJ, that officer could also be charged with conducting unbecoming an officer and gentlemen. This article discusses this unique aspect of the military justice system and

provides some practical examples of circumstances where charging Article 133 is appropriate.

Conduct unbecoming an officer and gentlemen is a punitive article (Article 133) of the Uniform code of Military Justice. The language of the statute has been in place and unchanged since 1806. It is imprecise and exceedingly broad: “Any commissioned officer, cadet, or midshipman



Detachment for Cause Cont.

DFC is only appropriate when the misconduct or substandard performance is serious enough to end an officer's career.

Disciplinary action includes NJP, and non-punitive options to manage an officer's problem behaviors include informal counseling, non-punitive letters of caution (NPLOC), letters of instruction (LOI), notations in fitness reports, removal from screening for a prestigious next position, or removal from screening for command. Remember, though, commands should review MILPERSMAN 1611-010, Officer Performance, to determine whether the officer misconduct or substandard performance requires immediate PERS notification.

A command can request a DFC for misconduct and/or substandard performance involving one or more significant events resulting from gross negligence or complete disregard of duty. A command can also request a DFC for substandard performance of duty over an extended period of time if it continues to exist after correc-

tive action has been taken, and/or loss of confidence in an officer in command.

Upon requesting a DFC it is important to have documentation and evidence in support of the request. For misconduct, it is rare for a DFC request to be approved if the command has not first taken disciplinary action. Similarly, if the request is for substandard performance over an extended period of time, counseling and guidance, LOIs, or fitness report notations are important documentations. You must have, however, given the officer a reasonable amount of time to improve after counseling.

Finally, before a DFC request is initiated, the leadership must determine that reassignment within the command has been considered but is not a reasonable alternative. The command must have supporting documentation, or an investigation in

cases where the basis is one or more significant events. When there has been an NJP or trial by court-martial and the misconduct is the sole reason for the request for DFC, the command must notify PERS following the guidance in MILPERSMAN 1611-010.

To submit the request, follow the steps on the chart on page 5 of MILPERSMAN 1611-020. Remember, the officer is not "DFC-ed" instantly upon sending the request. So, the command cannot immediately mention the DFC request in his or her fitness reports. Only after the DFC has been approved by NPC, can the command comment on it in the officer's fitness report. To ensure that all of the steps in the DFC process are completed properly, do not hesitate to contact your local SJA when you determine that DFC may be the right course of action to take.

*** For information about DFC of enlisted members see MILPERSMAN 1616-010**

VITA Tax Center Is Seeking Volunteers!

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Want to learn more about deductions, credits, and other ways to save money on your taxes?

Volunteer for the Volunteer Income Tax Assistance (VITA) program for upcoming tax season. Dates: February 2017 to June 2017. We are seeking full-time and part-time volunteers. All service members, civilian DoD employees, and dependents are eligible to become VITA Volunteers. Volunteers receive training and certification from the IRS on how to categorize expenses and income so as to minimize tax bills and maximize refunds.

OUR CERTIFICATION TRAINING WILL BE HELD IN DECEMBER 2016 and JANUARY 2017.

If you are interested in volunteering, or would like to receive more information, please call DSN 243-7673 or commercial 046-816-7673 or email LT Ben Leatham at benjamin.leatham@fe.navy.mil

who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct." Incidentally, "gentleman" includes both male and female commissioned officers, cadets, and midshipmen.

Isn't this law too broad? Shouldn't officers be on some more precise notice of what type of behavior meets the definition of conduct unbecoming before being charged and convicted for it? These questions were answered by the U.S. Supreme Court in the case of *Parker v. Levy*.

CPT Levy was a Vietnam era Army physician who was court-martialed for, among other things, publicly denouncing the Green Berets as liars and killers of innocent women and children. The issue before the Supreme Court was whether his conduct should be punished when he had no idea it was criminal. It was not codified anywhere that he should not disparage his colleagues in this way. The Supreme Court determined that the military is a specialized society with a distinct justice system based on military customs and traditions. Whether written or unwritten, it was immaterial whether CPT Levy was on notice that his specific conduct might be punishable under the Code for "in military life there is a higher code termed honor, which holds its society to stricter accountability." Said another way, "what is conduct unbecoming an officer and gentleman is beyond the bounds of an exact formula but must be gauged by actual knowledge and experiences of military life, its usages and duties."

In the modern context, the Manual for Courts-martial provides some specific

Conduct Unbecoming an Officer, Cont.

examples: dishonorable failure to pay a debt; cheating on an exam; opening and reading a letter of another without authority; using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place; public association with known prostitutes; failing without good cause to support the officer's family; committing or

woman in his bedroom, but filmed her performing oral sex on him without her knowledge or consent.

While sexual relations were suspected but not proved, an Army officer's unduly familiar relationship with an Army corporal's wife.

A naval officer placed a condom over his head and blew it up like a balloon at two separate official functions.

The manual for courts-martial and these examples make it clear that conduct unbecoming can be behavior in an official capacity which dishonors or disgraces the person as an officer, or it can be behavior in an unofficial or private capacity which is dishonoring or disgracing.

A discussion topic among military justice scholars are on-line based activities. Whether incendiary Facebook posts, or role-playing personas that are disgracing, or cyberbullying, one does not surrender honor online. Under the right circumstances each could be charged as conduct unbecoming. A statute from 1806 still serves as the legal instrument to ensure the stricter accountability that Supreme Court recognized as necessary.

As a legal matter, unit commanders have broad discretion in the types of behavior to charge as conduct unbecoming. As a practical matter, it is often preferable to charge other more specific violations of the code. Where there are questions, as always, please consult with the Region Legal Service Office.



attempting to commit a crime involving moral turpitude are all conduct unbecoming. The recently court-martialed LCDR was convicted of attempted sexual abuse by sending lewd messages via a messaging application. That conduct would have also qualified as conduct unbecoming.

The following are other fairly recent cases where courts-martial concluded that behavior was conduct unbecoming:

While on leave at his parents' home in Kentucky, an Army cadet had consensual sexual activity with a civilian



By LTJG Peter Berg

When Sailors approach you with legal questions, it's easy to feel overwhelmed and not know where to turn. The Legal Assistance office can help! We offer a wide range of services to active duty personnel, certain qualified DoD civilians, retirees, and dependents. This brief overview will tell you what we can and can't do for your sailors.

Routine Services:

Our front office is open from 0800-1530 M-F, except the first Friday of the month when we open at 1200. Our staff can draft special powers of attorney and notarize documents on the spot. Powers of Attorney are particularly useful for Sailors who are deploying and need to authorize a friend or family member to take action on their behalf – whether it's selling a car or shipping household goods. One important caveat, we do not draft General Powers of Attorney and strongly advise against having one. They essentially give another person the right to act on behalf of the Sailor in all matters. The powers of attorney we draft are limited to the specific purpose for which it is required. Sailors can also utilize http://www.jag.navy.mil/legal_services/SPOA.htm to draft certain powers of attorney on their own (i.e. banking, household goods), and then bring it to the Legal Assistance Office for notarization. Customers MUST bring in two valid

What is Legal Assistance

forms of identification in order to receive notary services. Valid forms of identification include CAC cards, dependent ID cards, state issued drivers licenses, and current U.S. passports.

Legal Assistance also provides a number of informational handouts on immigration, naturalization, marriage in Japan, divorce in Japan, adoption in Japan, and living wills.

Legal Advice includes nonsupport, immigration, naturalization, debt collection, consumer fraud, landlord/tenant, and adoption (step-parent only). Some legal issues, such as divorce, are made infinitely more complicated by being stationed in Japan. We have an excellent Japanese legal advisor on staff that can help Sailors navigate through the Japanese legal system if necessary.

Unfortunately, should clients need to litigate an issue in court they will have to retain a private attorney licensed in that particular state, as our attorneys are not able to represent clients in the civilian legal system. In addition, we do not provide advice in the following areas: legal issues involving their personal business ventures, complex estate planning, real estate purchase agreements, or bankruptcy. We may provide simple guidance in regard to federal and state taxes but not advice as that requires special legal expertise. We do not draft separation agreements or other family law documents but can help you review any documents that you have. Finally, we

do not assist in criminal matters, or matters in which a citizen and the government are on opposite sides of an issue. The Defense Service Office is the appropriate venue for those issues.

Please advise your Sailors to bring any pertinent paperwork or other documentary items with them to their appointments. When in doubt, give the office a call and we can clarify whether we can assist your sailor. Please see the contact information below.

Should your Sailor require substantive legal advice, our legal assistance attorneys see clients by appointment, or during walk-in hours, which, in Yokosuka, are Tuesdays and Thursdays from 0800-1100.

Yokosuka: Monday - Friday from 0800-1530. DSN 315-243-8901, COMM 046-816-8901. Legal Assistance is located at the Personnel Service Detachment (PSD) building on the second floor. Notaries and POAs are done on a first come first serve basis.

Sasebo: Monday - Thursday 0800-1500 and Friday 0800 to 1200. DSN 315-252-2119, COMM 011-81-956-50-2119. Legal Assistance is located in building PW47, on the first floor. Notaries and POAs are done on a first come first serve basis.

Guam: Monday – Friday 0800-1630. DSN 315-333-2061, COMM 671-333-2061. Legal Assistance is located in building 1A on Aldrich Road.

Where the JAG Corps Began: The Story of Nathaniel Wilson

By LT Caitlyn McCarthy

This is the story of two courts-martial by the first unofficially-official Solicitor for the Navy; the first resulting in the dismissal of a Commander who went on to become a Rear Admiral, and the second returning a conviction and dismissal of a Commander who ended his career in retirement:

As any Chief Petty Officer can tell you, the United States Navy was born on October 13, 1775 when a tiny colonial fleet was charged with disrupting incoming British supply ships. This small fleet was subsequently disbanded, but on April 30, 1798 an Act of Congress officially established the Department of the Navy.

In 1860, President Abraham Lincoln appointed Gideon Welles as the Secretary of the Navy, at a time when the organization truly came into its own. Not only did the number of Sailors grow from 8800 to 60,00 but the number of vessels went from 76 in 1860 to more than 600 by the end of 1864, making it the largest Navy of its time.

As the force grew, and the mission expanded, so too did the rules and regulations governing the Navy become more sophisticated in their interpretation and application. Recognizing this, Secretary Welles, without any authorization from Congress, appointed Nathaniel Wilson as the first "Solicitor for the Navy Department" in 1862.

Nathaniel Wilson was a bright, young, 28 year old attorney from Zanesville, Ohio. At the time of his appointment, Wilson had been admitted to the District of Columbia Bar for a year and was working as an Assistant in the United States Attorney's office

in Washington, D.C..

While Wilson undoubtedly had multiple noteworthy cases during his 3 year tenure, two are particularly interesting. First was the case of CDR Napoleon Collins:

During the Civil War, several countries agreed to remain neutral and offered their ports to both Union and Confederate ships; in turn, ships were expected to respect the neutrality of these foreign territorial waters. On October 7, 1864, CDR Napoleon Collins, commander of the *USS Wachusett*, decided to disregard that observance. Finding the *CSS Florida* moored in the neutral port of Bahia, Brazil, CDR Collins, first attempted to provoke the *Florida* into an altercation. When this attempt failed, and after a vote of the officers on board the *Wachusett*, CDR Collins ordered the *Wachusett* to overtake the *Florida*. The *Wachusett* was victorious and towed its war prize out to sea and back to Union waters.

With Nathaniel Wilson acting in his capacity as Solicitor for the Navy, CDR Collins was court-martialed for his unlawful taking of the *CSS Florida* in neutral territory. Taking into account the unique legal issues resulting from a conflict between warring factions in a neutral foreign port, Nathaniel Wilson's legal experience helped in winning a conviction against CDR Collins, who was sentenced to be dismissed from the Navy. Because CDR Collins' actions were so popular and militarily effective, however, and due to the fact that Secretary of State William H. Seward may have actually sanctioned the attack in statements made to the US Minister to Brazil, J. Watson Webb, Collins' dismissal was never

carried out. CDR Collins went on to become a CAPT in July 1866 and later attained the rank of RADM in August of 1874.

In likely his last case as Solicitor for the Navy, Nathaniel Wilson was also the Judge Advocate for the March 18, 1865 court martial of CDR William A. Parker.

On the evening of January 23, 1865, CDR Parker was the commanding officer of the 5th Division of the North Atlantic Blockading Squadron. CDR Parker's division was stationed on the James River and was charged with maintaining a blockade against Confederate ships. Several barriers, including sunken fishing vessels and nets, had been arranged in the river to aid in the blockade. A change in the weather, however, caused the river to swell, wiping out many of the Union's obstructions. The Confederacy took their chance and charged upriver with three iron-clads, and several torpedo and tug boats. In an unlikely move, CDR Parker ordered his flagship away from the incoming Confederate fleet. His superior in command, Lt Gen. Grant, sent furious, unanswered messages to Parker to return to meet the enemy; ultimately the Secretary of the Navy removed CDR Parker from command mid-battle.

As it happened the confrontation was a Union victory as two of the three *CSS* iron-clads became moored in the mud as the swollen river receded; this blocked the rest of the Confederate fleet and opened the iron-clads up to hours of shelling from nearby shore batteries before escaping up river.

CDR Parker was court martialed for



**RLSO Japan
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Information**

Command Services

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LCDR Latham
Hudson
315-243-8904

Acting

Department Head

LCDR Beth Kontny
315-243-8904

**Command Ser-
vices JAGs**

LT Grant Arnold
315-243-9589

LT Peter Yagel
315-243-7342

Paralegal

LN2 Deanna Banks
315-243-9437

JAG Corps Cont.

“withdrawing from and keeping out of danger to which he should have exposed himself” and “failing to do his utmost to overtake and capture or destroy a vessel it was his duty to encounter.” Once again Nathaniel Wilson was successful in securing a conviction and CDR Parker was sentenced to dismissal from the Naval service. Secretary Welles, however, recognized that it was difficult to know precisely why CDR Parker moved his ships, and decided against carrying out the punishment. CDR Parker was subsequently moved to the “retired” list.

In February 1865 Secretary Welles requested the official creation by Congress of the office of Solicitor and Naval Judge Advocate General. The act was approved on March 2, 1865

and on March 6, 1865 President Lincoln appointed William Eaton Chandler to the newly created office (12 Days ahead of the court-martial of CDR Parker).

A long line of lawyers and non-lawyers in various positions and from differing backgrounds advised the Navy and its components from 1865 to 1967. It was not until December 8, 1967 that Congress approved an act amending sections 5148 and 5149 of Title 10, U.S. Code officially establishing the Judge Advocate General’s Corps, a Staff Corps of the United States Navy.

For his part, Nathaniel Wilson went on to become a successful private attorney and the president of the D.C. Bar association four times. He died in 1922 at the age of 86.

On what was recently the JAGC’s 49th birthday, it is important to remember this man who took up an unofficial office, 105 years ahead of his time, and paved the way for the JAGC of today by demonstrating the necessity and value of legal expertise and its delicate balance with the demands of war.

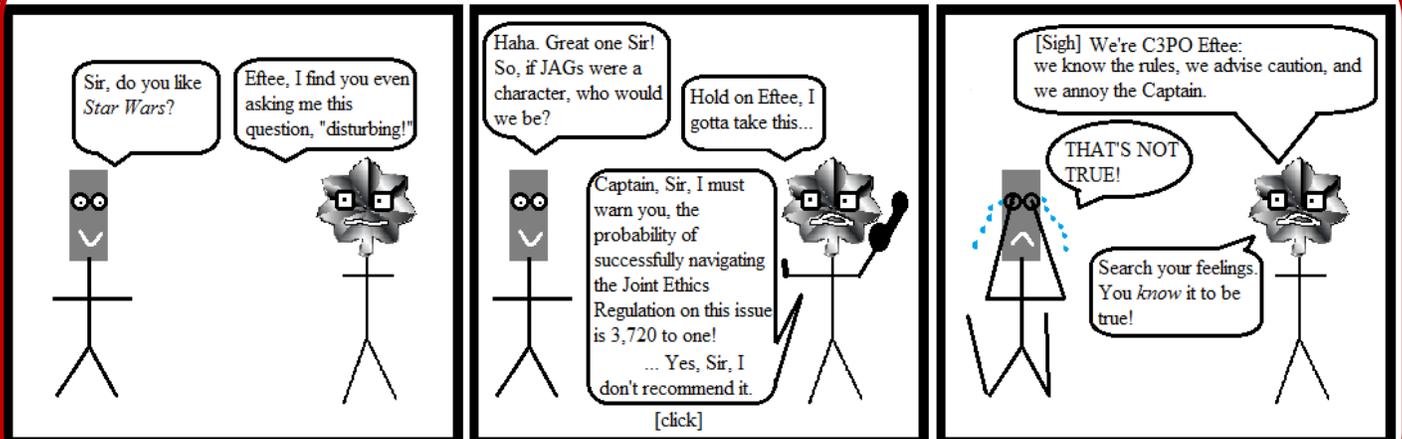
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by. LT Grant Arnold

Number 1: "JAG Wars"



(*Note* This edition is based on a true conversation. Credit for the C3PO idea goes to CDR Hayes Larsen, JAGC, USNR)