

The Advisor

Region Legal Service Office Southeast

CDR Mike Holifield, CNRSE SJA and Director, Command Services



Highlights:

- DoD SSN Reduction Plan
- CNIC Holiday Guidance
- SAPR Expedited Transfers

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“Ten thousand feet up, up the side of Mount Crumpet,
He rode with his load to the tiptop to dump it!”ⁱ

—Potential violation of numerous environmental laws and regulations.

“And then, in a twinkling, I heard on the roof
The prancing and pawing of each little hoof.”ⁱⁱ

—Trespass, with a likely claim for shingle damage.

“Now you go home and write “I am very sorry for what I did to Frosty” a hundred zillion times. And then maybe - just maybe, mind you - you’ll find something in your stocking tomorrow morning.”ⁱⁱⁱ

—Impermissible Extra Military Instruction; also, potential 8th Amendment violation.

“Why am I such a misfit? I am not just a nitwit. You can’t fire me, I quit. Seems I don’t fit in.”^{iv,v}

—Violation of Article 85 (Desertion) or Article 92 (Dereliction), UCMJ. (Even for elfin dentists.)

No doubt about it—the Holidays are a veritable quagmire for the legally unenlightened. Fortunately, we offer this invaluable compilation of practical wisdom just in time for the Yuletide Season. (*Thrifty hint: Copies of The Advisor make great stocking stuffers.*) Not only have we included the now-traditional “Holiday Ethics Guidance” and soon-to-be-holiday-classic treatise on “Line of Duty/Death Investigations in Cases of Terminal Illness,” but we also serve up a hearty feast of hurricane claims, PII, expedited transfers and administrative separations, with a heaping plate of figgy pudding and DSCA for dessert. Consider this the RLSO SE Command Services Directorate’s gift to you and yours. (Note: This does not constitute a “gift” as defined by 5 C.F.R. §2635.203, as it has no monetary value—despite its immense emotional and, perhaps, psychological worth.) We hope you find it at least as useful as the “Black Ops” Snuggie™ and Bacon-Flavored Barbie™ waiting under your tree. Happy Holidays.

ⁱ “How the Grinch Stole Christmas,” by Dr. Seuss, 1957.

ⁱⁱ “A Visit from St. Nicholas,” by Clement Clarke Moore (disputed), 1822.

ⁱⁱⁱ “Frosty the Snowman,” animation, directed by Jules Bass and Arthur Rankin, Jr., 1969.

^{iv} “Rudolph, the Red-Nosed Reindeer,” animation, directed by Larry Roemer, 1964.

^v But, then, you knew all this, didn’t you?

You know you need a JAG, but which one?

LT Aubrey Charpentier, Asst. Deputy SJA, CNRSE

Wouldn’t it be nice if all of our Sailors did the work that was required of them and then caused no problems outside of work? Thankfully, the vast majority of our Sailors do. However, the old adage that “10% of the people cause 90% of the problems” definitely rings true in the Navy. As a CO, XO, or Legal Officer, you know that you will probably have to speak to a JAG if a Sailor gets into trouble. But which JAG do you call? Do you go directly to your SJA? Do you talk to a trial counsel? In this article, I will talk briefly about the different JAGs you may come into contact with in the event one of your Sailors gets into trouble. By understanding what JAGs do, it should help you in determining who to call.

If you are asking the question, “What should I do with Sailor X?,” it is always a good idea to speak to your SJA. Staff Judge Advocates are akin to a doctor that is a general practitioner. We can give guidance on a number of options such as non-judicial punishment, extra military instruction, counseling, letters of caution, etc. While the commanding officer ultimately makes the decision as to what type of administrative or punitive action to take, SJAs will often have dealt with similar experiences in the past and can provide guidance that could be useful in the current situation. Oftentimes, a commanding officer knows what he or she wants to do with the Sailor, but is unsure how to get there. An SJA can work with the commanding officer to identify the correct path.

In some situations, it will be obvious that the best course of action is to try the Sailor at court-martial. At this point, it is still a good idea to talk to your SJA about the situation; however, your SJA will likely recommend that you or your legal officer speak to a trial counsel. Trial counsel are more like surgeons that specialize on a certain part of the body. They specialize in military justice. They are the prosecutors that will, if need be, try your Sailor’s case in front of members. Once you feel that court-

(Continued on page 2)

Which JAG?...continued



martial is likely the proper result, a trial counsel will guide you through this process. In the Southeast, the trial counsel will draft the charges, prefer charges, and assist you in getting the charges referred, either through the Special Court-Martial Convening Authority or General Court-Martial Convening Authority, depending on the severity of the charges. The trial counsel's experience is extremely valuable throughout this process. While no verdict or sentence is 100% certain, trial counsel provide a reasonable prediction, based on the charges and the evidence, of the likelihood of a conviction, the amount of time the process will take, and the potential cost to the command. If a trial counsel thinks a case should not be brought forward, he or she will let the command know. While it is ultimately the commanding officer's decision to go forward with the case, trial counsel will help ensure that this decision is based on a complete understanding of the situation. For cases that are being prosecuted in the civilian arena, trial counsel can also work with the local District Attorney's office to help ensure that cases more appropriately tried in military court are transferred there, if possible.

For cases that are on the borderline between NJP and court-martial, SJAs can still provide advice. Your SJA may consult with trial counsel on the issue, or have the command contact trial counsel directly to provide more information.

Just like every Sailor is unique, every Sailor's situation is unique. Determining how to proceed after a Sailor has made a mistake or committed a crime is fact-specific. Regardless of what happens, knowing which JAG to call can help ensure that commands resolve issues at the most appropriate level.

Line of Duty/Death Investigations in Cases of Terminal Illness

LT Jesse Adams, SJA, NS Mayport

The sad reality for many of us is that at some point we will likely experience the death of a service member within our command. While we may think that this will be an unexpected loss due to an accident, deaths can also occur as a result of illness or disease. Although a loss by any cause can be devastating, there are things that you can do to ensure your command is ready to complete the necessary investigation when a Sailor passes away due to illness.

The governing instruction on how to handle a death investigation, be it from an accident or from natural causes, is JAGINST 5800.7F (JAGMAN). At a minimum, a preliminary investigation (PI) should be completed in a death case. Section 0226 of the JAGMAN states that a PI "shall" be conducted into the death of a member of the Naval service or into the death of a civilian aboard a place under Naval control. Section 0229 further states that "each active duty death shall be subject to, at a minimum, a preliminary inquiry..." Then, at the conclusion of the PI, the commander must determine which options to exercise and report that decision to his or her superior.

A common misconception is that all deaths on active duty require a full command investigation. However, deaths by terminal illness normally only require a PI. Section 0226 states that no investigation beyond a PI will be normally be necessary if the death was the result of a "previously known medical condition and the adequacy of military medical care is not reasonably in issue."

While the JAGMAN gives commanding officers flexibility in choosing how to conduct the PI, a PI in a death case should be directed in writing by an appointing order, and the PI should also be documented in writing. Per section 0229, a PI consisting of a basic letter report, attached to a medical record entry or accident report, may be sufficient.

The release of benefits is a key reason why it is so important to properly perform a death investigation, and to perform the PI in writing. Upon the death of a service member, the Navy Casualty and Assistance Office may not release benefits associated with the Dependent Indemnity Compensation Program or Survivor Benefits Program until they receive a copy of the PI. Deaths caused by a terminal illness are usually not sudden or unexpected. Upon your Sailor's passing, the cause of death may seem obvious to you and you may question why a written PI might be needed. Please keep in mind that, although you may be acutely aware of the circumstances, those outside your command are not and still need to properly document the circumstances.

According to section 0203, a PI should normally be completed within three calendar days of the commander learning of the incident. Even if that timeline is not achievable, according to section 0225e, death investigations should not normally exceed 20 calendar days from the date of the death or its discovery. Any delay in the completion of the investigation may result in a delay of benefits. As such, the completion of a death investigation should be a priority for the command. Preliminary investigations into deaths caused by a terminal illness should be concise and can be completed in a short amount of time. Please do not hesitate to contact your local staff judge advocate if you have any questions.

Department of Defense SSN Reduction Plan is Underway!

Joanne Parra, CNRSE FOIA/PA Coordinator

The Department of Defense recognizes its obligation to protect service members against unwarranted invasion of privacy through the use of and disclosure of Personally Identifiable Information (PII). One way to help protect Sailors is through the reduction of the use of Social Security numbers (SSN). The latest phase of the DoD SSN Reduction Plan affects the way that commands can collect and maintain SSNs. As of 1 October 2012, here are some key points to keep in mind:

- Disclosure of the last four numbers of SSNs to individuals without a "need to know" is prohibited and will be treated as a reportable breach.
- Faxing of PII is prohibited, with a few exceptions. If PII or SSN must be transmitted, use an alternative method such as encrypted/digitally signed e-mail.
- All e-mails containing PII must be encrypted. Sending unencrypted e-mails containing PII is a reportable breach.
- Use of network-attached multifunction devices and scanners to scan or copy PII is restricted. You are not allowed to use the "scan to email" function if you are not sure if the device will encrypt email. When in doubt, scan and save the document on the hard drive or limited access folder and then send via encrypted email.
- Command Rosters should only include name, address and telephone numbers. Never include the SSN or last four.

Remember we must reevaluate the use of SSNs in every transaction. Any use should be closely reviewed to determine if it is absolutely necessary to include the SSN, or the last four digits of the SSN.

The Department of the Navy Chief Information Officer (DON CIO) will continue to monitor the effectiveness of the SSN Reduction Plan and adjust policy to restrict or expand further use if necessary. The SSN Reduction Plan will not eliminate the use of SSNs completely. DON CIO is granting exemptions to the plan on a case-by-case basis. Exemptions relevant to the legal community include the following:

- Navy Personnel Command (NPC) will continue to use the last four on correspondence and the full SSN in the PERS database for identification purposes.
- Correspondence received from NPC will continue to have SSN information.
- Evals/FITREPS – Continue to use SSNs.
- Medical Forms – Continue to use SSNs.
- NJP, ADSEP, Page 13s and Suspects Rights documents and forms which require SSNs were granted waivers from DON CIO. We will continue to use SSNs on NPC/BUPERS forms and court-martial documents.
- Admin forms – leave chits, travel claims, check-in/out forms.
- Commands should be using Navy Standard Integrated Personnel System (NSIPS) and Defense Travel System (DTS) and will continue to use SSNs for those systems. Any internal command forms must eliminate the use of SSNs. SSNs can only be collected on approved OPNAV forms.

Safe Access File Exchange (SAFE) DON CIO has approved "For Official Use Only" (FOUO) files and files containing PII to be transferred using SAFE. Senders are instructed to properly mark these documents that are being uploaded from the SAFE menu of options as "Privacy Act information." This will notify recipients that the data is protected by the Privacy Act and that the recipients are now responsible for its protection. SAFE can be used to transmit PII to commercial email addresses (where there is a bona fide need to know).

Please note that although SAFE is permitted for the transmittal of PII, the most secure methods are: (1) personal delivery; (2) encrypted e-mail; or, (3) the U.S. Postal System or an approved shipping carrier.

SAFE may be accessed online at: <https://safe.amrdec.army.mil>. DON CIO provides a detailed explanation of SAFE's capabilities and user guidelines on its website at: <http://www.doncio.navy.mil/ContentView.aspx?id=4098>.

If your command is aware of a PII breach, don't "hold your breaches." Report your breach. If your command needs assistance and guidance on reporting requirements, contact the CNRSE Privacy Act Coordinator at (904) 542-4026. The SSN Reduction Plan requires the effort and attention of everyone in the chain of command. Further information and resources are located at <http://privacy.navy.mil>.

HOLIDAY ETHICS GUIDANCE

The holiday season is traditionally a time of parties, receptions, and exchanging of gifts. Please remember that the Standards of Conduct still apply. To ensure that you don't unwittingly violate the standards, a brief summary of the applicable rules is set forth below. If you have any questions, please contact your local legal office or the CNRSE Staff Judge Advocate's office at (904) 542-2133.

I. General Rule. Federal personnel may not accept gifts offered because of their official positions or offered by a "prohibited source." A prohibited source is anyone who:

- A. Seeks official action by the employee's agency;
- B. Does business or seeks to do business with the employee's agency;
- C. Conducts activities regulated by the employee's agency;
- D. Has interests that may be substantially affected by the employee's performance or nonperformance of duty; or
- E. Is an organization composed of a majority of members described above.

II. Parties, Open-Houses, and Receptions Hosted by Non-Prohibited Sources. Federal personnel may attend social events sponsored by non-prohibited sources and accept food, refreshments, and entertainment if no one is charged admission (e.g., most holiday receptions and open-houses).

III. Parties, Open-Houses, and Receptions Hosted by Prohibited Sources Including Contractors. The general rule is that Federal personnel may not accept gifts from prohibited sources, including contractors and contractor personnel.

- A. Exception #1: Federal personnel may accept gifts (other than cash) not exceeding \$20, as long as the total amount of gifts that the personnel accepts from that source does not exceed \$50 for the year.
- B. Exception #2: Federal personnel may accept gifts, even from a contractor employee that are based on a bona fide personal relationship. (Such personal gifts are actually paid for by the contractor employee rather than the contractor.)
- C. Exception #3: Federal personnel may generally attend an open-house or reception, and accept any gift of refreshments if it is a widely-attended gathering, and the employee's supervisor determines that it is in the agency's interest that the employee attends.
- D. Exception #4: Federal personnel may accept invitations (even from contractors) that are open to the public, all Government employees, or all military personnel.
- E. Exception #5: Federal personnel may accept invitations offered to a group or class that is not related to Government employment. (For example, if the building owner where your office is located throws a reception for all of the tenants of the building.)
- F. Exception #6: Refreshments consisting of soft drinks, coffee, pastries, or similar refreshments not constituting a meal may be accepted since they are not considered to be a gift.
- G. Exception #7: Outside business or other relationship results in attendance at an event. For example, a Federal employee's spouse works at SAIC. The Federal employee may accompany the spouse to the SAIC employee's holiday party since the invitation is to the spouse as an SAIC employee, and not to the Federal employee because of his or her position.

IV. Parties, Open-Houses, and Receptions Hosted by Other Federal Personnel.

- A. Invitation from your subordinate: You may accept personal hospitality at the residence of a subordinate that is cus-

HOLIDAY GUIDANCE...continued

tomarily provided on the occasion.

B. Invitations from your boss or a co-worker: No restrictions. Enjoy!

V. Gifts and Gift Exchanges Between Federal Personnel. In general, supervisors may not accept gifts from subordinates or Federal personnel who receive less pay.

A. Exception #1: During holidays, which occur on an occasional basis, supervisors may accept gifts (other than cash) of \$10 or less from a subordinate.

B. Exception #2: Supervisors may accept food and refreshments shared in the office and may share in the expenses of an office party.

C. Exception #3: If a subordinate is invited to a social event at the supervisor's residence, the subordinate may give the supervisor a hospitality gift of the type and value customarily given on such an occasion.

Please note, there are no legal restrictions on gifts given to peers or subordinates, however, common sense and good taste should apply.

VI. Gifts and Gift Exchanges That Include Contractor Personnel.

A. Gifts from contractors, even during the holidays, may not exceed \$20.

B. Gifts to contractors: Check with the contractor, since many contractors have codes of ethics that are similar to the Federal rules, and therefore, may preclude the acceptance of gifts.

VII. Other Important Information.

A. You may not solicit outside sources for contributions for your party. This includes funds, food, and items.

B. Office parties are generally unofficial events, and you may not use appropriated funds to pay for them.

C. Beware that door prizes or drawings could involve gambling, which would require compliance with state statutes and Federal regulations. DoD regulations prohibit gambling in the Pentagon and on Federal property or while in a duty status. GSA regulations ban gambling in GSA owned or controlled buildings.

D. You may not use appropriated funds to purchase and send greeting cards.

E. As a general rule, participation at holiday social events is personal, not official, and therefore use of government vehicles to/from such events would not be authorized. However, there may be very limited circumstances in which a senior official or officer is invited to attend because of his official position and where he will be performing official functions at the event as opposed to being invited because he or she is an important person. In these situations, use of a government vehicle may be authorized, subject to normal "home-to-work" transportation restrictions. Note, however, that it would be difficult, if not impossible, to justify the use of a government vehicle when a function involves one's immediate staff/office or events comprised of personal friends. All requests for use of a government vehicle to attend holiday social events should be reviewed on a case-by-case basis.

VIII. Rules Applicable to Contractor Employees. Many contractors have rules of ethics or business practices that are similar to the Federal rules. Take these rules into consideration before offering contractor employees gifts or opportunities that they may not be able to accept. Examples:

HOLIDAY GUIDANCE...continued

A. Office Party (non-duty time): Your office is having a holiday party during the non-duty lunch hour or after work and asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts, but a fair share contribution to the refreshments. Remember, contributions must be voluntary, so soliciting must be done with care to ensure there is no pressure. Also, ensure this is non-duty time for the contractor employees as well.

B. Office Party (duty time): What about a party that cuts into duty hours? The Government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor has to decide whether to let its employees attend and forego payment for their time, or insist that they continue to work. If contractor employees are allowed to attend, the contractor must also decide whether it would pay its employees for that time, even though the Government would not reimburse for it. The contractor does not have to pay its employees for that time. Consult the contracting officer and ethics counselor before inviting contractor employees to a function during their duty hours.

C. Gift to Supervisor: Your office wants to give the office supervisor a gift. However, you can't solicit other employees for contributions to a group gift. (Group gifts are permitted only for special, infrequent events such as retirements.) As for contractor employees, you can't ask them to contribute anything, as it is considered soliciting a gift from a prohibited source. Even if contractor employees volunteer to contribute cash, it may not be accepted because the \$20 exception does not apply to cash.

D. Exchange of Gifts: Your office, including the contractor employees, wants to exchange gifts at the party. Because it is difficult to have truly anonymous gift exchanges, you will want to restrict the value of such "random or exchanged" gifts to the authorized \$10.00 or less if personnel receiving different pay levels are involved. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random are more troublesome. Where contractor personnel are involved, a \$20 per contractor company limit applies. Where an employee may buy a gift for a superior, the \$10 limit is prudent. Some organizations consider such a gift exchange to be exchanges of items of equivalent value, and that everyone participating is paying market value for the items, so no one is receiving a gift. Only in that case would the suggested monetary limits not apply. The best practice is to limit gifts to \$10 or less when involving more than a very small group of equivalently paid co-workers.

E. Private Parties (Federal Personnel): One of your Government co-workers is having a party at his house and has invited office personnel, including the contractor employees. A gift of food and refreshments to a contractor employee does not violate Government ethics rules. The contractor employees may want to check with their contractor's rules before accepting (since many contractors have similar ethics rules). If the contractor employee brings a hospitality gift, it may not exceed \$20. If such a gift is edible, even if it exceeds \$20, the host may accept it on behalf of all the guests and share it with them.

F. Private Parties (Contractor Employee): If a contractor employee is having a personal party and invites Government personnel, normally Government personnel must decline, since the food, drink, and entertainment is a gift from a prohibited source. Several exceptions may permit attendance, however. Under the \$20 rule, if the average cost per guest does not exceed \$20, Government personnel may accept. (However, if the cost per guest is \$40, the "I won't eat more than \$20 worth of food" defense will not work.)

Also, Government personnel may accept if the invitation is based on a bona fide personal relationship with the contractor employee. Finally, if the party qualifies as a widely-attended gathering (involving a large number of persons representing a diversity of views) and the employee's supervisor determines that it is in the agency's interest for the employee to attend, the employee may enjoy the food, drink, and entertainment. Government personnel who desire to take a gift to show their appreciation for the hospitality should consult with the contractor employee to determine if he or she may accept such a gift in accordance with the contractor's rules of ethics.

G. Private Parties (Contractor-sponsored): If the contractor is sponsoring an employee's party or open-house, and you are invited by the contractor (or an employee of the contractor), you may not attend unless one of the exceptions in paragraph III above, apply.

HAVE A HOLLY, JOLLY, ETHICAL HOLIDAY SEASON THIS YEAR!!!

No Pros Memos—What they are and how they can help your Command

Jacksonville Trial Office, RLSO SE



As everyone knows, there has been an increased focus on sexual assault in the military. In some cases, the end results are clear – the alleged offender may be tried by court-martial, have a hearing before an administrative separation board, or receive some form of Non-Judicial Punishment. However, these outcomes are sometimes not appropriate based on the facts of the case. What happens in those cases where the facts do not support prosecuting an alleged offender? A case recommendation letter (otherwise known as a “No Prosecution Memo” or “No Pros Memo”) from the RLSO SE Trial Office can help.

A No Pros Memo is basically a trial lawyer’s advice to the command. It provides a detailed review of the facts and evidence of a given case, along with a review of applicable law and an evaluation of the strengths and weaknesses of the case. The No Pros Memo is the RLSO commanding officer’s (or senior trial counsel’s) formal recommendation that a command not prosecute a Sailor. The recommendation is exactly that – a recommendation. The commanding officer or sexual assault initial disposition authority (depending on the type of allegation) still has the ultimate responsibility of directing the appropriate processing of any case.

If not required, why would a command want a No Pros Memo? The No Pros Memo serves several important roles. First, its review of the facts and evidence provides an easy to follow summary of a case. Second, the legal review of the case’s strengths and weaknesses explains which criminal charges are viable. Third, the memo documents VWAP compliance and contacts with (or attempts to contact) victims and, as applicable, details the victim’s desire regarding the outcome of the case. Fourth, a No Pros Memo documents due diligence on the part of the command as the command formally reviews an allegation of sexual assault, precluding any later claims that the command “swept it under the rug.” Finally, the memo provides a legal basis on which disposition of cases can be made.

If a sexual assault case is reported to your command, steps must be taken to investigate and evaluate the case. A No Pros Memo is the next to last step before the command decides that a sexual assault case doesn’t warrant criminal charges. As with all allegations of sexual assault, call your SJA or local trial office for more information or assistance.

An Open House: NAS Pensacola

LT Joel White, SJA, NAS Pensacola

Naval Air Station Pensacola presents a unique situation in controlling base access. Thousands of visitors come here to see the National Naval Aviation Museum, Barancas National Cemetery, Pensacola Lighthouse, and Fort Barancas. The Museum reports that maximum visitation reaches over 10,000 visitors at its peak when the Blue Angels conduct practice air shows. Although these peak days only occur approximately twelve times yearly, lesser crowds numbering in the five figures occur regularly during the summer. In sum, NAS Pensacola has a multitude of attractions which require the installation to open its doors to individuals who have no form of clearance to enter and operate on the base.

NAS Pensacola extends beyond the area along the water also known as Sherman Field. The area of land a few miles to the north named Center for Information Dominance, Corry Station comprises a distinct land area which falls under the NAS Pensacola command structure. Additionally, another distinct area of land, Saufley Field, also is part of the NAS Pensacola complex.

A waiver extended from CNRSE provides the backbone for NAS Pensacola to permit individuals without a connection to our DoD mission to enter the base. Security deftly handles the daily influx of sightseers through several measures to keep the installation safe and secure. A mix of manned security patrols around off limits areas, with signage and lighting alerting individuals entering the restricted areas.

Despite the diverse geography and challenging security posture of NAS Pensacola, we continue to serve almost 23,000 military and civilian tenants with pride and distinction. Home to major tenant commands including Naval Air Technical Training Center with 4,700 personnel, Marine Aviation Technical Support Group 21 with 3,300 personnel, Center for Information Dominance, Corry Station with just over 2,000 personnel, and Naval Aviation Schools Command with almost 1,400 personnel, training at the Cradle of Naval Aviation hosts a large swath of the Navy-Marine Corps team.



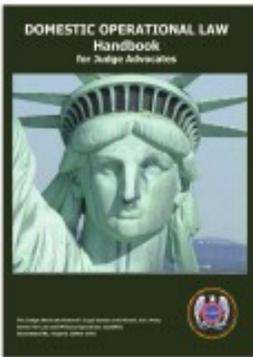
Defense Support to Civil Authorities

LT Jeffrey Marden, SJA, NAS JRB New Orleans

Imagine you are the Staff Judge Advocate at Naval Air Station, Joint Reserve Base, New Orleans. One fall Sunday, just as the Saints are taking the field, a disgruntled fan destroys the Mercedes-Benz Superdome in protest of the team's inconsistent defense. There are thousands of casualties. Local police arrive at the scene just as the suspect is speeding away. Although police are in hot pursuit, the sheriff wants to use military helicopters to help arrest the suspect. At the same time, first responders have located survivors under the rubble but can't reach them with the equipment on hand. Since most of the police are at the scene, some residents take this opportunity to loot businesses in the area. The governor calls your CO and asks for help.

Department of Defense Directive 3025.18, Defense Support of Civil Authorities (DSCA), is the controlling instruction. When evaluating requests to assist, the DSCA requires consideration of several factors: legality (would the assistance comply with the law); lethality (potential use of lethal force by or against DoD forces); risk (safety of DoD forces); cost (source of funding and impact on DoD budget); appropriateness (is the requested mission in DoD's interest); and, readiness (would assisting impact DoD's ability to perform its primary mission). So, according to the DSCA and other laws and directives, what can your CO do to help?

1) Military helicopters to pursue the suspect?



No. This violates "legality" because it would violate the Posse Comitatus Act (PCA)(18 U.S.C §1385) and DoDD 5525.5, DoD Cooperation with Civilian Law Enforcement Officials. The military is prohibited by law from enforcing civilian law or acting in a law enforcement capacity (e.g. arresting a suspected felon). Thus, you should recommend against support.

2) Rescuing survivors trapped beneath the rubble?

Yes. The DSCA grants your CO "immediate response authority" to save lives, prevent human suffering, or mitigate great property damage within the U.S if a civil authority requests assistance, there are imminently serious conditions, and time does not permit approval from higher authority. All of these factors are met here, so the military may assist; however, this authority is only valid for a maximum of seventy-two hours, so your CO should notify his chain of command simultaneously to obtain approval from the DoD.

3) Looting of businesses?

It depends. This is a complicated situation that will require more facts and information. The PCA and DoDD 5525.5 would normally preclude support based upon these facts alone, but the Stafford Act (42 U.S.C. §5121 et seq.) may apply if the situation worsens (think Hurricane Katrina) and the President declares the circumstances to be either a major disaster (42 U.S.C. §5170) or emergency (42 U.S.C. §5191(a)). However, the Governor must first request federal assistance based upon his finding that the size and severity of the disaster will overwhelm state and local response capabilities. In addition, he must activate the state response plan and take all appropriate action allowable under state law. And if the federal government does provide assistance, the Federal Emergency Management Agency (FEMA) becomes the lead federal agency for disaster relief operations.

One important point to note is that the Stafford Act is not an exception to the PCA. Therefore, the restrictions of the PCA are fully applicable unless the situation deteriorates to the point that the President declares it a civil disturbance and invokes the Insurrection Act (10 U.S.C. §331). This step is only applicable when the President determines that the civil disturbance is preventing enforcement or execution of federal law (think Los Angeles Riots in 1992). He would then issue a proclamation ordering the rioters to disperse and an executive order directing the Secretary of Defense to respond with military forces.

Situations where the military provide assistance to civilian authorities are fact-specific and often extremely complicated. Please remember to always CYA (consult your attorney) with any questions.

SAPR Expedited Transfers Require “Eyes Wide Open” Approach from Commands

LT Will Eden, Professional Development Officer, RLSO SE

In July and August, I had the privilege to serve on a Sexual Assault Prevention and Response Leadership (SAPR-L) Master Mobile Training Team. After 31 days, 12 locations (across Florida and the CENTCOM AOR), 44 training sessions, and hundreds of commands trained, one of the issues that caught audiences off guard was the SAPR expedited transfer request process. During these training sessions, it became clear that both commands and Sailors require a better understanding of the expedited transfer process so they can exercise their options and roles with “eyes wide open.”

What is an Expedited Transfer?

An expedited transfer is governed by MILPERSMAN 1300-1200. This procedure allows a Sailor who makes a credible, unrestricted report of a sexual assault to request expedited transfer from the command. The commanding officer has 72 hours to act on this request, with a presumption that he or she will grant the request. If the commanding officer denies the request, the Sailor can appeal the denial to the first Flag Officer (or Senior Executive Service (SES) equivalent) in the chain of command. If the request is granted, it will then be forwarded to Navy Personnel Command, who will issue Permanent Change of Station (PCS) orders for the Sailor, effectuating the transfer.

This seems pretty cut and dried, but there are many nuances that both commands and Sailors must take into consideration to make fully informed decisions.

What is a “Credible Report” and what is the Deadline for Requesting a Transfer?

According to MILPERSMAN 1300-1200 a report is “credible” if a commanding officer has “reasonable grounds to believe an offense constituting sexual assault occurred based on all available evidence and the advice of the supporting legal advisor or counsel.” It can be difficult to determine a report’s credibility even after many months of investigation, so what about an expedited transfer request made immediately after an unrestricted report? In this situation, the commanding officer must make a decision within 72 hours based only on the limited information he may have. In this situation, I suggest that if the report is credible enough to warrant an investigation, then it is credible enough for the purposes of expedited transfer requests.

Another thing that was surprising to some is that there is no time limit for a Sailor to make an expedited transfer request as long as the alleged victim and alleged assailant remain in the same chain of command. A commanding officer must take action on the request after a credible report of sexual assault, regardless of when the request is made.

What does the Presumption to Grant the Request really mean?

While MILPERSMAN 1300-1200 provides criteria for the commanding officer to consider when reviewing an expedited transfer request, the presumption is to grant the request. But this is just a presumption. Operational necessity may require a commanding officer to deny a request. However, if a commanding officer chooses to exercise such discretion, he or she must be able to justify this decision, as the likely appeal will be scrutinized at the flag level.

What does an Expedited Transfer Request really mean for the Sailor?

An expedited transfer request is a request for PCS orders. One thing a Sailor must realize is that there is no presumption that the Sailor will remain in the area of his or her current duty station. In addition, a Sailor’s sea-shore rotation patterns and career milestones may be affected by the transfer. If the Sailor is currently a student, he will be transferred from his school, losing his rate training. Finally, and potentially most importantly, the expedited transfer could result in a PCS move and all of the associated effects on a Sailor’s family.

As a result, MILPERSMAN 1300-1200 requires that a command fully inform the Sailor of the potential issues arising from expedited transfer requests. While taking care not to discourage Sailors from making a choice they are entitled to make, commands must be sure to let their Sailors know that the request to transfer could have profound effects on families and careers.

So, how should Commands Approach Expedited Transfer Requests?

The best way to be ready for an expedited transfer request is to be prepared with a robust SAPR program within your command. Your SAPR Victim Advocate will be able to shepherd Sailors through these and other potential issues, as well as provide the command with valuable advice. Sailors who have been victims of sexual assault are in a very vulnerable position. Your SAPR program will enable your command to provide the most effective support and advice to these Sailors at the time they need it most.

Another great source of information is your supporting judge advocate. He or she can provide advice and opinions on the case, and can aid your command in navigating SAPR requirements. This is particularly valuable, given the requirement to consult a judge advocate in all reports of sexual assault.

Hurricane Isaac—Lessons Learned

LCDR Christopher Mora and LT Jeffrey Marden, Staff Judge Advocate's Office, NAS JRB New Orleans

New Orleans is famous for Mardi Gras, delicious food, jazz, the Saints, and (unfortunately) hurricanes. Nearly two months ago, we found ourselves bracing for Isaac, a strong Category 1 hurricane with 80MPH winds. Although not nearly as devastating as Hurricane Katrina, Isaac impacted most military families in the New Orleans area. Hurricane Isaac also provided valuable lessons learned for dealing with both storm preparation and the claims process in the storm's aftermath.



For the Judge Advocate unaccustomed to dealing with natural disasters, hurricane preparation and response can be a daunting task. The first major concern is the risk of flooding, which is the leading cause of death in hurricanes and can prevent people from obtaining supplies after the storm. As a result, preparedness includes protection of family and personal property, as well as purchasing enough food and bottled water to survive one month. The likely loss of power can intensify the challenge because of potential food spoilage. All of this begs the question: Should you remain and shelter in place, or should you evacuate? Each situation is different and conditions on the ground dictate the right course of action. Regardless, after the storm passes, it is time to assess the magnitude of the damage to structures and personal property and begin the claims process.

The New Orleans Region Legal Service Office Southeast (RLSO SE) staff spent the better part of two weeks post-Isaac helping base residents file claims for damage to their personal property. The claims process is straightforward but specific:

1) When to file a claim?

Claims must be filed within two years of the incident. This is a federal statutory requirement, and it is not savable.

2) Who may file a claim?

Active duty, reservists on active duty, and DON federal employees may file claims. Retired service members may file if the damage occurred while they were on active duty. Any person designated by a valid power of attorney may file on behalf of an eligible claimant.

3) How do I file a claim?

Complete DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) and DD Form 1844 (List of Property and Claims Analysis Chart). These forms are available from your local legal assistance office or on the "Claims" section of the JAG website (www.jag.navy.mil). Fill out the forms completely and be sure to attach all supporting documentation requested.

4) Where do I file my claim?

For the Southeast AOR, file with:

Personnel Claims Unit Norfolk
 9053 First Street Suite 102
 Norfolk, VA 23511-3605
 (888) 897-8217/Fax (866) 782-7297
 DSN 564-3310/FAX DSN 564-3337

5) Other important things to remember:

- You must file with your insurance company if you have a private insurance policy that may cover all or part of your loss before the government can pay any part of your claim.
- If an award is authorized, DFAS will electronically deposit the amount awarded directly into your account.
- Sometimes the claims examiner may want to inspect the damaged items, so DO NOT dispose of any items until settlement of the claim (unless they present a safety or health risk such as broken glass or spoiled food).

When a hurricane approaches, protection of self and family is the number one concern. Reimbursement for personal property damage is a real but secondary consideration. Nonetheless, know that there is a process in place as well as dedicated personnel to assist personnel with claims and other related legal issues. This should help put your Sailors' minds at ease when deciding whether to evacuate. If you have any specific questions, as always consult your local RLSO office.

Renting—Protecting Yourself

LT James Mosimann, RLSO SE Legal Assistance Office, NAS Pensacola

When entering into a residential lease, both landlords and tenants hope that everything runs smoothly. While this is usually the case, sometimes problems arise. The following are ways to protect yourself when entering into a residential lease.

Read your lease before you sign:

Always read your lease in its entirety before signing! A lease may seem like a bunch of legal jargon, but remember, you will be bound by its terms. Are you required to have the carpet professionally cleaned before moving out? Do you have to upkeep the lawn? Do you have to give notice when you move out? If so, how much—14, 30, 60 days? What is the procedure for notifying your landlord about repairs?

Taking an hour to review the lease before signing could save you a lot of time—and money—in the future.

Get everything in writing:

Scenario: Lease says you must pay \$40 a month for lawn service. You tell the landlord that you do not want this service. The landlord tells you not to worry about it because he/she will not charge you. “Just sign the lease and you’ll be good,” the landlord says.

What should you do? Before signing anything, get the landlord’s promise in writing and make sure it is incorporated into the lease.

All promises/agreements should be in writing. If an agreement is made in person or over the phone after you sign the lease, follow up with an e-mail confirming the details of the conversation. This is to avoid having to prove the existence of an oral agreement in court if a dispute arises.

Conduct a thorough inspection:

Upon moving in, make sure you inspect your new place thoroughly. Take pictures, make a list of defects, and provide a copy of the list to your landlord immediately. This will prove that you are not responsible for pre-existing conditions. Similarly, upon moving out, be present during the final inspection and take pictures of the condition in which you are leaving your place. If the inspector does not see any problems, make sure you get that in writing. A few extra minutes at the move-in and move-out can save a great deal of trouble later.

Security deposits:

What does your lease say about security deposits? Is the pet deposit non-refundable? Under what conditions could the landlord retain the security deposit? Once you have moved out, the landlord is most likely required to return the security deposit or provide an itemized list of deductions for damages within a certain period of time. This requirement varies state-by-state.

In Florida, your landlord has 15 days to return your deposit, or 30 days to give you written notice by certified mail explaining the amount they’re keeping and why. If your landlord doesn’t give the required notice, they must return all of your deposit. If they do give you notice, you then have 15 days to dispute the claim. Each state has different landlord/tenant rules. It is a good idea to be familiar with your state’s rules.

Military clause:

The Servicemembers Civil Relief Act (SCRA) is a federal law that allows a servicemember to terminate a lease before its expiration date, but only after providing written notice and a copy of PCS orders to the landlord. Even if there is not a military clause in your lease, you are still protected under the SCRA. Under the SCRA, the termination date of your lease will be 30 days after the next payment is due. For example, if you give written notice on 15 February and you pay rent on the first of each month, then your termination date is no earlier than 30 March. Some states have their own versions of the SCRA that give servicemembers additional protections; for example, one of those states is Florida.

In Florida, you can terminate a lease for a variety of reasons. The big ones are: you get PCS orders requiring you to move at least 35 miles away; you receive orders requiring you to move into government quarters; you become eligible to live in government quarters and opt to move into them; or you are released from active duty after having leased your place while on active duty and it is at least 35 miles from your home of record. If you qualify, in order to terminate your lease, give your landlord: written notice, including a termination date that is at least 30 days after the date you deliver the notice to your landlord, and a copy of your orders or a letter signed by your commanding officer. Once you do this, your landlord must prorate any rent you pay to the termination date in your notice.

Landlord-Tenant Law can be confusing. While this article focused on Florida, laws may vary depending on your state. Should an issue arise, please visit your nearest Region Legal Service Office Southeast Legal Assistance Office.



Recent Court-Martial Sentences in Navy Region Southeast

- At a General Court-Martial convened on board NAS Jacksonville, a Petty Officer Third Class pled guilty to wrongful use of marijuana and he was found guilty of unauthorized absence terminated by apprehension. The court-martial sentenced the Accused to seven months of confinement, reduction in rate to E-1, and a Bad Conduct Discharge.
- At a General Court-Martial convened on board NAS Jacksonville, a Petty Officer Second Class was found not guilty of assault and willfully and wrongfully discharging a firearm.
- At a Special Court-Martial convened on board NAS Pensacola, a Petty Officer Third Class pled guilty to assaulting a child under the age of 16 years. The military judge sentenced the Accused to 12 months of confinement, reduction in rate to E-1, forfeiture of \$994.00 pay per month for 12 months, and a Bad Conduct Discharge.
- At a Special Court-Martial convened on board NAS Jacksonville, a Petty Officer Second Class pled guilty to fraternization, dereliction of duty, failing to obey a lawful order, and wrongful appropriation of a government vehicle. The military judge sentenced the Accused to 100 days of confinement, reduction in rate to E-1, and a Bad Conduct Discharge.
- At a General Court-Martial convened on board NAS Jacksonville, a Lance Corporal pled guilty to wrongful use of marijuana (3 specifications), having sexual intercourse with someone incapable of declining participation, and engaging in a sexual act with someone incapable of declining participation. The military judge sentenced the Accused to twelve years of confinement, reduction in rate to E-1, and a Dishonorable Discharge.
- At a Special Court-Martial convened on board NAS Jacksonville, a Petty Officer Second Class was found guilty of attempting to steal military property. The court-martial sentenced the Accused to be restricted to base for 60 days and to forfeit \$1,244.00 pay per month for four months.



NOTE: Courts-martial in Navy Region Southeast are tried with few exceptions at NAS Jacksonville, NS Mayport, and NAS Pensacola. Therefore, the location of where a court-martial described above was convened does not necessarily correlate to the command that convened the court-martial.

Who Decides? ADSEP Board Separation Authority

Elan Ghazal, SJA, NAS Key West

As you likely know, the Administrative Separation process can be complicated. This article is limited to a small portion of the process: determining the Separation Authority (SA). The SA is the individual who makes the final retention or separation decision. Because of the number of different scenarios that can occur, and the fact that the lowest SA should be used whenever possible, it is important to always make sure that the appropriate SA is identified. Military Personnel Manual (MILPERSMAN) article 1910-704 (accessible here: <http://www.public.navy.mil/bupers-npc/reference/milpersman/1000/1900Separation/Documents/1910-704.pdf>) offers an "If...then" table with scenarios based on the basis for separation. While this should satisfy most SA determination questions, it does not address all the nuanced scenarios.

The following is a selection of more complicated scenarios you may confront, with the appropriate SA for each:

1. When a Sailor is mandatorily processed, but the board recommends retention or suspended separation, and the SA (see table in 1910-704) supports the recommendation, Commander, Navy Personnel Command (COMNAVPERSCOM) will act as the SA.
2. When an administrative board finds one or more reasons for separation, but recommends retention, while the SA (see table in 1910-704) recommends separation, the Secretary of the Navy (SECNAV) will take over as the SA.
3. For involuntary separation of active duty members with 18 or more years of total active military service, Chief of Naval Personnel (CHNAVPERS) acts as the SA.
4. When a member has a Physical Evaluation Board (PEB) action completed or pending, and is simultaneously processed for administrative separation, COMNAVPERSCOM acts as the SA.
5. If a servicemember diagnosed with PTSD or a traumatic brain injury (TBI) is processed for separation, a determination must be made as to whether the PTSD/TBI may be a contributing factor to the conduct forming one or more of the bases for Administrative Separation. If a mental health professional determines circumstances reveal PTSD/TBI may be a contributing factor to one or more of the bases for separation, the Chief of Naval Personnel (CHNAVPERS), or higher authority, will act as the SA.
6. With a limited number of specified bases such as misconducts and defective enlistments, the ADSEP procedures used and the Board's specific recommendation will determine whether a GCMCA or a SPCMCA will act as the SA. Please see the table on page 3 of MILPERSMAN 1910-704 for further information.

The MILPERSMAN 1910-700 series is your guide for determining the SA, but please take advantage of your local RLSO Command Services Department or Staff Judge Advocate. Your judge advocate will be able to help guide you and ensure that Sailors are separated (or retained) as efficiently as possible.