



## REGION LEGAL SERVICE OFFICE EUROPE, AFRICA, SOUTHWEST ASIA

# THE MILLRIND

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## Greetings from RLSO EURAFSWA!

The sage guidance, “if the process is good, the result is good,”<sup>1</sup> is a refrain I have been reflecting on since assuming the role of Officer-in-Charge of RLSO EURAFSWA’s Bahrain detachment. It follows that the key question facing advisors and Commanders before a decision is made or an official action is taken is ‘what process is due for any given issue or problem?’



In the criminal context, the Manual for Courts-Martial provides the major contours to guide us. A seemingly never-ending source of other authorities, however, must be considered (e.g., federal statutes and regulations, DoD and DON instructions and regulations, the JAGMAN, etc.) to ensure we are adhering to proper process in the administrative realm.

Outside of that framework, consider these foundational due process related questions: Has reasonable notice been afforded? Has the affected person had an opportunity to confront the evidence or witnesses? Has the affected person had an opportunity to present evidence or witnesses? Does the affected person have a right to counsel? Is the decision-maker impartial? Is there a record that supports the decision? Is the affected person able to appeal or seek review of the decision? Not all of these questions may be applicable to all decisions or issues, but it is a helpful mental model as a starting point as you work through an issue. Of course, it should not replace going to the authoritative source dictating what process is due.

Many of us tend to be “action-oriented;” eager to resolve one issue so that we can move on to the next. Yet, sometimes we fall short because we feel comfortable relying on our past experience with an issue and fail to realize there has been a critical change in the relevant authority. “Go-bys,” letter templates, or opening the file from the most recent similar action from your share drive certainly can be a time-saver, but the best practice is to verify that it remains current.

One aim of *The Millrind* is to help keep you informed of changes in authorities and procedures to ensure we are preserving due process.

LCDR Ryan Sylvester, JAGC, USN  
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<sup>1</sup> This quote is a key take away from a podcast interview with CAPT (ret.) Richard Giroux, JAGC, USN, in Chapter 24 of the U.S. Navy JAGC’s podcast series [JAG Talk](https://www.jag.navy.mil/news/jagrado/jag_radio.htm) available in podcast aggregators and at [https://www.jag.navy.mil/news/jagrado/jag\\_radio.htm](https://www.jag.navy.mil/news/jagrado/jag_radio.htm).

## Search and Seizure: Legal Officer Quick Tips

By: LCDR Adam Aliano, NS Rota

**SCENARIO:** You receive a report on Monday morning that a member of your command was seen ingesting cocaine by three junior members of your chain on Saturday night. Your CO believes that there may be a drug issue within the command (based on a series of drug cases onboard) and wants to head the issue off immediately.

The CO calls you up to their cabin and asks, “Legal O, I want to search [the accused’s] rack work station, and barracks room and conduct a ship-wide urinalysis. **What do I need to do?”**

The best answer is to call the JAG. However, at first blush, you can offer some of the following answers:

- 1. Only the CO** can issue a search authorization. They must make the determination that **probable cause** exists to believe that **specific evidence** of a potential crime (here, drugs) would be found in a **specified location** (rack, work station, in the member’s system). No one else can take this action unless they are designated as the acting CO.
- 2.** Search authorizations are required if an individual has a **reasonable expectation of privacy** in the place to be searched (e.g., rack, storage locker, unopened gym bag, bodily fluids).
- 3.** The **CO MUST have JURISDICTION** over the person or place to be searched:
  - \* *Rack/work station* – CO has jurisdiction because these places are located within their command;
  - \* *Urinalysis* – CO has jurisdiction over the person to be searched because they serve within their command;
  - \* *Barracks room* – Ship CO DOES NOT have jurisdiction as the place to be searched is outside of their command. Contact installation SJA to work with installation CO for authorization (he or she has jurisdiction over the barracks);
  - \* *Off-base storage locker* – Typically no military jurisdiction exists CONUS but there is an exception for OCONUS bases. Contact the installation JAG and coordinate with local authorities.
- 4. You need probable cause.** “A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched...the reasonable belief must be supported by facts and information must be reliable and credible.” (*2018 Commander’s Quick Reference Legal Handbook*)

**Example:** In this hypothetical, there is sufficient probable cause to conduct a command-directed urinalysis on the member in question, and search their rack or barracks room (base CO authorization for the latter). This is assuming that the CO believes that the statements of the witnesses are credible.

## Search and Seizure Cont.

5. **ALWAYS** ask for the member's consent **FIRST**. This is the cleanest and easiest way to meet the CO's intent and keeps clear of any potential constitutional problems. (*MRE 314 (e)*)
6. If this case is a major **felony level offense** (e.g., death, drug distribution, sexual assault) – **STOP**. Notify the JAG and/or NCIS on-call agents.
7. The CO does not need to issue an authorization for **COMMON AREAS** (essentially an area where multiple people have access). Examples of common areas (with no expectation of privacy) are shared kitchens, living rooms, the bos'n locker, etc. However, a DIVO's desk within the workplace is not a common area and there is an expectation of privacy, so CO's authorization to search is required.
8. Command Urinalysis – Based on MRE 313, the CO can order a unit sweep urinalysis or search of personal property so long as there is **credible evidence** supporting the belief that there is a safety or good order and discipline concern within the unit.

**DO:** Contact the SJA office.

**DO:** Document the rationale for the sweep in a memo signed by the CO.

**DO:** Make the sweep as broad as possible – the entire unit is best (i.e., all racks and berthings and all personnel for urinalysis), but a sub-unit sweep is permissible too (i.e., duty section 3 of 6, OPS department, etc.).

9. Use the proper forms.

\* **Search Authorization (CO signed)** – Call the SJA's office. Before CO signs, make sure that all evidence provided to them is sworn-to and documented (OPNAV 5527/10). Ensure that the place to be searched and the items sought are specifically described. As per guidance, add "any parts, pieces, or components thereof" when describing the evidence sought.

\* **Consent for Search Form** – JAGMAN A-1-x (or call SJA office). Same specificity as above.

As always, remember, **slow is smooth and smooth is fast**. Use this article as a guide on-station, but the best practice is to pause the scenario and call the JAG. Though the immediate resolution of problems is paramount for commanders, ensuring they do so in a legally accurate manner is a powerful long-term tool for the maintenance of good order and discipline. We are always on call to support and guide you through these issues.

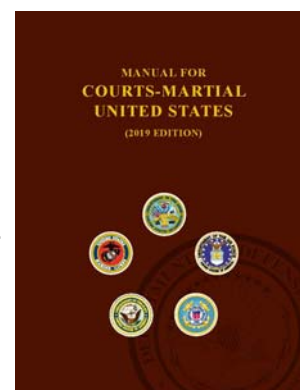


# YOUR SJA!

## A Court-Martial by Any Other Name...

By: LCDR Keven Schreiber, Senior Trial Counsel, RLSO Naples

The Military Justice Act of 2016 (MJA16) has been in effect for almost a year now—since 1 January 2019 to be precise—and brought with it a host of changes and new tools for commanders and military justice practitioners, perhaps the most interesting of which was the introduction of a new type of court-martial: **the “non-BCD special court-martial”** (no-BCD special). We still get questions from SJAs and commanders about how this new court-martial works and when/why it might be used. From the desk of the Region’s Senior Trial Counsel, what follow are one prosecutor’s thoughts on the no-BCD special.



The no-BCD special fills the space in-between summary courts-martial and special courts-martial. MJA16 specifically singled out summary courts as non-criminal forums, left special courts-martial as they are (able to handle almost all types of charges, but with a max punishment of bad conduct discharge and 1 year confinement), and added the new no-BCD special as a step between the two. **The no-BCD special is reserved for misconduct happening after 1 January 2019.**

The no-BCD special is a criminal forum, meaning that Sailors who are convicted at one will have a criminal record, but the forum is one of limited jurisdiction, meaning it is only able to hear certain types of cases. Wrongful use or possession of controlled substances under Article 112a and charges that carry with them a maximum possible confinement of 2 years or less at a general court-martial may be referred to a no-BCD special (examples: unauthorized absence, disrespect and insubordination, DUI, larceny less than \$1000, basic assaults and batteries, fraternization, patronizing a prostitute); but offenses that would require sex offender registry, no matter the max punishment, may not. A Sailor may consent to the forum for charges outside those limits as part of a plea agreement, except for sex offender registry offenses. For charges that meet the restrictions, a Sailor may not refuse being tried in this forum as they can refuse NJP or summary courts-martial. The maximum punishment at a no-BCD special is 6 months confinement, restriction for 60 days, hard labor for 3 months, reduction to E-1 (including removing Anchors), and 2/3 forfeitures for 6 months (or equivalent fines). As the name suggests, a punitive discharge is not an authorized punishment at the no-BCD special. Officers may be tried at a no-BCD special, but punishments are limited: no confinement, and no hard labor, for example.

So what are the pros of this new forum and why might a commander want to use it? First and foremost, the no-BCD special is a judge-alone or “bench” trial. Bench trials tend to be more efficient both during pre-trial litigation and at trial. Judges are presumed to know and follow the law, so there is usually less litigation about small issues that might impact a member panel. Because they are more efficient, they may proceed more quickly from preferral of charges to resolution than a special court-martial. Additionally, the command need not select or provide a member panel, a process that can be cumbersome and expensive. The forum also sits in a sweet-spot between NJP and a special court-martial to handle Sailor misconduct that may be too serious for NJP (or the Sailor refuses NJP), but not serious enough for a special court-martial. Notably, the number of special court-martial cases in which a convicted sailor received *both a punitive discharge and more than 6-months confinement* from a member panel are basically zero over the past several years, so the no-BCD special fits exactly where most punishments are already falling. The no-BCD special gives commanders another forum for handling misconduct at the outset, but also a chip to play during plea negotiations. A Sailor may desire to plead guilty at a no-BCD special rather than a special court-martial due to the inherent punishment protections it provides.

## Court-Martial Cont.

That said, the no-BCD special has some cons. Because it is still a criminal forum, **the rules for courts-martial and rules of evidence still apply**. That means witnesses, experts, and travel associated with conducting the trial are still the funding responsibility of command; the investigation and evidence supporting alleged offenses must be admissible under the rules; and post-trial processing must still occur. An accused still has constitutional confrontation rights and the standard of beyond a reasonable doubt still applies, so the government must produce witnesses and evidence in court to convict the accused. What this means practically is that there will still be pre-trial litigation about admissibility of evidence that may lengthen the timeline for resolution of the charges, and witnesses for both the government and defense will need to be brought to court for the trial that can create both expense and administrative burden on the command. At the trial, the command will also still be responsible to supply a bailiff, brig-chasers, and potentially security watchstanders. Lastly, because a discharge is not authorized, commanders must still process Sailors for ADSEP if they desire to get them out of the Navy or the processing is otherwise mandatory.

Commanders should always consider the full range of potential disposition options for alleged offenses, of which the no-BCD special is just one. (See: Appendix 2.1 of the 2019 Manual for Courts-Martial for fantastic new guidance on offense disposition.) For example, drug use and possession under Article 112a is usually handled at NJP, but what if the case is more serious or a Sailor refuses NJP? The no-BCD special might be an efficient way to hold an offender criminally liable and impose punishment more serious than is available at NJP. However, the defense may be entitled to funding for an expert witness to help them address drug lab testing; and in the case of a positive urinalysis, the entire urinalysis team could reasonably expect to be witnesses at the trial, possibly impacting command readiness during the trial. Commanders would also be responsible for handling post-trial issues and the mandatory administrative separation processing for drug offenses following any conviction. That said, if the same type of offenses were initially referred to a special court-martial, they could be sent to a no-BCD special by way of a plea agreement in which the accused also waives his or her administrative separation board.

Ultimately, the no-BCD special is not a silver bullet for low-level offenses, but simply another tool in the good order and discipline toolbox. If you would like to discuss how a set of offenses might be handled at this forum, please reach out via your staff judge advocate to the trial department. We're here to help!

PROS OF NO-BCD COURT-MARTIAL	CONS OF NO-BCD COURT-MARTIAL
Judge-alone = more efficient/faster	Rules for courts-martial and rules of evidence apply = there will still be pre-trial litigation
No members = less expensive	Government still has to produce witnesses and evidence in court (time, \$\$\$)
Middle-ground for offenses too serious for NJP, but not serious enough for special court-martial	No discharge authorized, so follow-on ADSEP is only means to process Sailors out of the Navy (but a court-martial conviction is binding on an ADSEP Board)

## Military Personnel and Civilian Employees Claims

By: Barbara Perotti Casagrande, NAS Sigonella

If your car gets damaged by an act of vandalism or your home is flooded by heavy rains, what are you going to do? Well, you can file a Military Personnel and Civilian Employees Claim!



### **What is a Military Personnel and Civilian Employees Claims (PCA)?**

The PCA covers personal property loss and damage sustained by DON Personnel that is caused by flood, fire, theft, vandalism, natural disaster and other unusual occurrence.

### **What claims are payable?**

The PCA claims are payable only if incident to service and only if it occurs on a Military Installation or at the DON personnel's residence.

### **Who can file a PCA claim?**

The PCA covers all active duty members and reservists on active duty for training under federal law. The PCA also applies to DON Federal employees. Reservists or retired members may only claim for damages under the PCA if loss or damage to their personal property occurred while they were on active duty.

### **How does someone file a claim?**

The PCA claim should be presented in writing within two years from the date of the accident or loss to the Personnel Claims Unit in Norfolk.

The claim package should be sent by email including two forms: the DD Form 1842 and 1844, together with repair estimates for damages and replacement cost estimate for loss, pictures of the damaged personal property, and police or fire report.

For privately owned vehicles, the claimant should add a copy of the current registration of the vehicle. If the claimant has authorized somebody else to file the claim, a power of attorney should be included, as well.

### **Where can the claim package be found?**

The PCA package can be found online through the Navy's Office of the Judge Advocate General website: [www.jag.navy.mil](http://www.jag.navy.mil) (by selecting "Legal Services" and then "Claims" on the screen). US RLSO EURAFSWA Claims personnel can also provide the PCA package, helping the claimant navigate the instructions.

### **Who will adjudicate and pay the PCA claim?**

The claims adjudicators at Personnel Claims Unit in Norfolk will process and adjudicate your claim.

### **How are the claims payments processed?**

The claims payments are processed through the Defense Finance and Accounting Service (DFAS). DFAS electronically deposits payments directly into the claimant's account. If the claimant does not have a DFAS pay account (i.e., he or she is no longer in the military or works for any Department of Defense agency), he or she should fill out the Electronic Funds Transfer (EFT) Data sheet, found in the PCA package online.

## Set Yourself up for Success: How to Make a Good First Impression!

By: LCDR Sara Neugroschel, Professional Development Officer, RLSO Naples

Now that the summer PCS season is behind us, I wanted to take a minute to discuss first impressions. First impressions are a reality; the good news is that there are a few simple rules you can apply to make a positive first impression. Most of these are commonsense but nonetheless important to stress.

**APPEARANCE IS IMPORTANT.** According to studies, first impressions are made within seven seconds. Make sure your uniform is in order, your hair is within regulations, and you do not have anything stuck in your teeth.

**BE ON TIME.** We are in the military. If you are not 10 minutes early, you are late. Bottom line: just be on time. You never want someone waiting on you, especially not the first time you meet.

**PRESENT YOURSELF APPROPRIATELY.** Introduce yourself and have a friendly demeanor. Hold in the yawns even if you are exhausted; caffeinate before the meeting.

**BE PREPARED.** Pull the biography of the person you are meeting – for JAGs, we have JES and JAG-LINK for a reason.

**BE CONFIDENT BUT NOT OVERCONFIDENT.** You may not know what every word or acronym means at first – trust me, that is perfectly normal. Don't fake it. Write your questions down as you go and then discuss them with a trusted source. Buy yourself time if you are not 110% sure of an answer. Having to admit you were wrong after the fact simply does not earn you credibility.

**LISTEN.** Be a good listener. We've all been in meetings where someone is asked a question and they never actually respond to the question asked – although they may have droned on and on. Do not be that person.

In addition to the above pointers, first impressions are often made via email or a written product. Here are a few simple things to remember when it comes written correspondence:

**PROOFREAD.** That misspelled word takes attention away from the document itself. And follow the Navy Correspondence Manual when applicable!

**EMAIL SIGNATURE BLOCKS.** Use Outlook appropriately. Set up your signature block with contact information (phone number and email addresses of different networks). Automate your signature block — not only on initial emails, but also on replies/forwards.

**BOTTOM LINE UP FRONT (BLUF).** It should not take paragraphs of text to get to the point of the email/paper. Be succinct and stick to the important points.

**INTRODUCTIONS.** Assuming someone is male or female based on their name is always risky – stay away from Ma'am or Sir and instead use their rank and last name. However, make sure you spell their name correctly. (It astounds me when people correctly spell Neugroschel but spell Sara with an "h".)



Best of luck with those first impressions. You've got this.

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## Navy Ball Dos and Don'ts: Ethical Party Planning

By: LNI Constance Casey, NSA Souda Bay

The Navy turns a youthful 244 years old this 13th of October, and commands across the world are already planning their celebrations. But those in charge of organizing these events face an ethical quandary — how do you plan a party that is still fun while not misusing tax dollars?



Luckily, the Navy has a solution for this, known as Navy Ball Committees (NBCs)! NBCs are Non-Federal Entities (NFEs), and often qualify as “By Our Own, For Our Own (“BOOFOO”) NFEs. BOOFOOS, have slightly more freedom to fundraise and request command endorsement than a typical NFE. Also, because Navy Birthday Balls are designated as “two-tiered” events — both an official Navy function and an unofficial function — NBCs are authorized to use appropriated funds for certain aspects of the event. Still, with multiple pots of money and so many different rules and guidelines, Navy Balls can be an ethical minefield. Below is a handy list of Dos and Don'ts to help!

✓ **DO: Become familiar with Ethics Gram 15-01 and NAVADMIN 095/15.**

Because Navy Birthday Balls have been designated as two-tiered events, this means you can use appropriated funds in support of the official function, but not the unofficial function. Differentiating between the official and unofficial parts of the Navy Ball can be confusing and it is not an area you want to mess up. If you have not yet done so, reviewing NAVADMIN 095/15 and Ethics Gram 15-01 will help clarify where to draw the line between official and unofficial. **BLUF: Anything formal is official (bell ringing, speeches, video presentation issued by the Navy), while anything party related is unofficial (food, decor, DJ for dancing).**

☒ **DON'T: Fail to consult Legal.**

While it puts a slight damper on the fun, do not forget that Commanding Officers may be held accountable for unauthorized fundraising for the Navy Ball. Legal is not required to participate in the NBC, but it is strongly recommended that the NBC still consult Legal to review fundraising limitations, advertising and logistical support rules, and other common pitfalls. Legal can also provide guidance to the Triad regarding the command's role and responsibilities for the official portion of the Ball.

✓ **DO: Establish a Navy Ball Committee.**

While commands are not required to form a NBC, it is highly recommended if you still want dancing, food, and cake, in addition to the speeches and ceremony. NBCs are authorized to raise funds to be used for all the fun bits of the Navy Birthday celebration, ensuring you do not run afoul of the rules governing appropriated funds.

☒ **DON'T: Forget to have fun!**

The Navy Birthday Ball is first and foremost a celebration, whether it is simply the official function or accompanied by a party. The rules are not meant to prevent you from having fun! The Navy has a long history (sorry, USAF) and proud heritage, and it should be appreciated and remembered. As always, if you have any questions on how to plan your event while staying within the ethical guidelines, consult your SJA.