



DEPARTMENT OF THE NAVY
UNITED STATES NAVAL ACADEMY
ANNAPOLIS, MARYLAND 21402

USNAINST 5800.2A
4/SJA
4 March 1985

USNA INSTRUCTION 5800.2A

From: Superintendent

Subj: SEARCH AND SEIZURE

Ref: (a) Manual for Courts-Martial, United States (MCM), 1984
(b) USNA Regulations, Article 120102
(c) USNAINST 5402.1A
(d) Manual of the Judge Advocate General

Encl: (1) Request for Authorization to Conduct Search and Seizure (NDW-USNA-DMB-5800/24)
(2) Record of Authorization for Search (NDW-USNA-DMB-5800/25)
(3) Consent to Search (NDW-USNA-DMB-5800/26)

1. Purpose. To establish the procedures for conducting searches of persons and property in all areas under the command control of the Superintendent and to designate those individuals who, when necessary, can provide authorization for searches at the Naval Academy when the Superintendent is unable to perform general command responsibilities.

2. Cancellation. USNAINST 5800.2.

3. Action or Information

a. Command Authorized Searches. Reference (a) provides that a Commander or his/her successor in command may, upon a showing of probable cause, authorize searches of: (R)

(1) Persons. The person of anyone subject to military law or the law of war wherever found. (A)

(2) Military Property. Military property of the United States or of nonappropriated fund activities of an armed force of the United States wherever located; (A)

(3) Persons and property within military control. Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located. (A)

b. In the event that the Superintendent is dead, incapacitated, absent, or otherwise unable to perform his/her command responsibilities, his/her successor in command as defined by references (b) and (c), will act as the authorizing official. Caveat: The Naval Academy Duty Officer (NADO) possesses no inherent power to authorize a search. The NADO can authorize searches only if he/she is exercising general command authority because the Superintendent and his/her successor to command are both absent, or unable to do so under the conditions set forth above. (R)

c. Procedures. Searches other than those discussed in paragraph 3d will be command authorized in accordance with the following procedures after they have first been discussed with the Staff Judge Advocate, Assistant Staff Judge Advocate, or the Legal Advisor to the Commandant by the person seeking the authorization. (R)

(1) The Authorizing Official. The authorizing official must be impartial in the exercise of his/her judgment; must base his/her decision to authorize a search upon a personal, neutral, and detached evaluation of the showing of probable cause presented to or otherwise known by him/her at the time of the request for authorization; and must make every effort consistent with the circumstances of the case to ascertain the truth. (R)

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(a) Probable cause requirement. A search authorization issued under this rule must be based upon probable cause.

R) (b) Probable cause determination. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. Before the authorizing official may conclude that probable cause to search exists, he or she must first have a reasonable belief based on a consideration of all relevant factors that the information giving rise to the intent to search is credible and has some basis in fact. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule shall be based upon any or all of the following:

1 Written statements communicated to the authorizing official;

2 Oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

3 Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion.

A) (c) Analysis. In determining whether there is probable cause to believe that a search would uncover evidence of wrongdoing, the task of the authorizing official is to make a practical, common sense decision as to whether, given all of the circumstances presented for his/her consideration, including the veracity and basis of knowledge of the persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in the place or on the person to be searched. It is not the presence or absence of any one factor which will be ultimately determinative, but whether after evaluating the totality of all circumstances presented, there exists a substantial basis for believing that the item sought will be located in the place asserted. Some of the key considerations are:

R) 1 Basis of knowledge, i.e., by what means did the individual come by the information?

a Personal observation--(i) Was his/her eyesight or vantage point adequate? (ii) Did he/she have sufficient knowledge and experience with the item to reasonably conclude as was conveyed? (iii) Was there sufficient exposure to make an informed observation?

b Informant--How reliable is the informant's information?

R) 2 Credibility. What was the character of the source of the information--(i) Was he/she a good citizen reporting events out of a sense of civic responsibility? (ii) Did the individual have any bias against the individual accused? (iii) If an informant, has he or she given information previously and how accurate has this information been? (iv) Is the information given by the informant sufficiently adverse to the fiscal or penal interest of the informant to imply that the information may reasonably be presumed to be accurate?

R) 3 Corroborating Detail--(i) To what extent have the assertions of the informant been corroborated? (ii) Has enough detail of the informant's information been verified to imply that the remainder can reasonably be presumed to be accurate?

R) Mere allegations without supporting facts may not be relied upon. For example, an authorizing official may not reasonably conclude that an informant is reliable simply because the informant is so described by a law enforcement agent. The individual making the probable cause determination must be supplied with specific details of the informant's past actions to allow that individual to personally and reasonably conclude that the informant is reliable.

(3) Search authorization. The authorization to search must be clear and unequivocal and particularly describe the place or person to be searched, the things to be seized, and the

person(s) authorized to conduct the search. The authorization should be in writing and signed by the authorizing officer in all cases unless immediate action is of the utmost importance, in which case the authorization may be oral and transmitted by any reasonable means, including by telephone. A written authorization should set forth all the facts considered by the officer authorizing the search. A search authorization may be issued based upon information transmitted by telephone or other means of communication.

(4) Oath requirement

(a) All information, written or oral, provided to the person authorizing the search (R) should be under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the person empowered to authorize the search will administer an oath to the person(s) providing the information.

(b) This oath requirement does not apply to that information provided to the authorizing officer in the form of affidavits or other statements previously sworn to before another official authorized to administer oaths; no further oath is required for such documents. If a previously completed unsworn statement is provided to the authorizing officer, it must be sworn to by the maker before it can be considered in the probable cause determination.

(c) Section 2502a(4)(b) of reference (d) provides that all persons empowered to authorize a search are also authorized to administer an oath or affirmation for any purpose relating to the search authorization. An appropriate oath (affirmation) is as follows: "Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

(d) The oath requirement in no way prevents or affects the authorizing official's (R) consideration of his/her own prior knowledge of facts relevant to the existence of probable cause.

(e) Enclosures (1) and (2) may be used respectively to request authorization to search and to record an authorization to search.

d. Searches Not Requiring Command Authorization. The following searches are lawful and may be conducted without the necessity of first obtaining command authorization:

(1) Consent searches. (M.R.E. 314(e) of reference (a)).

(a) General rule. Searches may be conducted of any person or property with lawful consent.

(b) Who may consent. A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(c) Scope of consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(d) Voluntariness. To be valid, consent must be given voluntarily. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(e) Enclosure (3) may be utilized for consent searches.

(2) Searches incident to a lawful stop. (M.R.E. 314(f) of reference (a)).

(a) Stops. A person authorized to apprehend under R.C.M. 302(b) of reference (a) and others performing law enforcement duties may stop another person temporarily when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

(b) Frisks. When a lawful stop is performed, the person stopped may be frisked for weapons when that person is reasonably believed to be armed and presently dangerous. A frisk consists of a careful pat-down of the outer clothing only. If, during the course of the frisk, the officer feels what he/she reasonably suspects is a weapon, he/she may seize the item. If the item is a weapon, he/she may thereupon apprehend the person and proceed to conduct a lawful search incident to an apprehension (described below). Any other item of evidence or contraband discovered in the process of the lawful frisk may be seized also.

A) (c) Motor vehicles. When a person lawfully stopped is the driver or a passenger in a motor vehicle, the passenger compartment of the vehicle may be searched for weapons if the official who made the stop has a reasonable belief that the person stopped is dangerous and that the person stopped may gain immediate control of a weapon.

(3) Searches incident to a lawful apprehension. (M.R.E. 314(g) of reference (a)).

(a) General rule. A person who has been lawfully apprehended may be searched.

(b) Search for weapons and destructible evidence. A search may be conducted for weapons or destructible evidence in the area within the immediate control of a person who has been apprehended. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property. The passenger compartment of an automobile and containers within the passenger compartment may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless whether the person apprehended has been removed from the vehicle.

(c) Examination for other persons. When an apprehension takes place at a location in which other persons reasonably might be present who might interfere with the apprehension or endanger those apprehending, a reasonable examination may be made of the general area in which such other persons might be located. (This provision is intended to protect personnel performing apprehension. Consequently, it is extremely limited in scope and requires a good faith and reasonable belief that persons may be present who might interfere with the apprehension or apprehending officials. Any search must be directed towards the finding of such persons and not evidence.)

(4) Searches of open fields or woodlands. (M.R.E. 314(j) of reference (a)). A search of open fields or woodlands is a lawful search within the meaning of M.R.E. 311 of reference (a).

(5) Exigent circumstances search. (M.R.E. 315(g)(1) of reference (a)). Exigent circumstances exist where there is probable cause to search plus a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. For example, if the duty officer smells what he/she reasonably suspects is the odor of burning marijuana, or smells the odor of alcohol emanating from behind a closed door, he/she may open the door and search the enclosed area immediately and seize any contraband or other evidence without first obtaining a search authorization. He/she may, in addition, apprehend individuals in the area.

(6) A search conducted in accordance with the authority granted by a lawful civilian search warrant.

(7) A search of government property where there exists no reasonable expectation of privacy. For example, desk drawers in working spaces may be searched without prior command authorization. However, wall or foot lockers in living quarters issued or assigned for the purpose of storing personal property may not be searched without prior command authorization.

(8) Abandoned property. For example, property deliberately thrown away by a fleeing or apprehended suspect may be seized without probable cause and without a search warrant or authorization by any person.

4. What may be seized? During any search conducted in accordance with this instruction the following items may be seized: (A)

- a. Unlawful weapons.
- b. Contraband.
- c. Evidence of crime, including instrumentalities or fruits of crime.
- d. Any other property which might be used to resist apprehension or to escape.

5. Search Guidelines. Searches at the Naval Academy will be conducted in accordance with the following guidelines:

a. The person authorized to conduct the search must not exceed the scope of the authorization as to the place or person to be searched and as to the actions reasonably calculated to locate the items authorized to be seized. If, however, during the course of an authorized search, seizable items not specified in the command authorization are inadvertently encountered in the plain view of the person conducting the search, and such items were not reasonably anticipated to be present at the time the search was initiated, they may be seized in addition to those items specified in the command authorization.

b. The person conducting the search should, except in unusual circumstances, be accompanied by at least one other person.

c. Any property seized as the result of a search shall be securely tagged with the following information:

- (1) Time and date of search and seizure.
- (2) Person authorizing the search.
- (3) Person(s) conducting the search and witness(es).
- (4) Property and/or person searched.
- (5) Specific location of the property seized.
- (6) Signatures of person(s) conducting the search and witness(es).

(7) Chain of custody indicating time, date, and person to and from whom the seized property is passed and where stored while in each person's possession.

6. Legal Advice. Any exceptions to or questions concerning the provisions of this instruction shall be approved by or directed to the Staff Judge Advocate or the Commandant's Legal Advisor, as appropriate.

7. Unauthorized Searches. The following searches are not authorized without the prior approval of the Staff Judge Advocate or the Commandant's Legal Advisor, as appropriate:

- a. Searches of the property or person of an individual not subject to military law, such as civilian employees, even though such property or person is situated in a place under military control.
 - b. Searches of the property or person of an individual subject to military law when such property or person is situated in a place not under military control.
8. Gate Searches. May be conducted on a completely random basis without probable cause, but only by authorization of the Superintendent. The method used to determine randomness may not be formulated by anyone in a law enforcement capacity (e.g., Security Officer, Gate Guard, etc.)
9. Inspections and Inventories in the Armed Forces. (M.R.E. 313 of reference (a)). Inspections and inventories may not be conducted without prior approval of the Superintendent, Commandant of Midshipmen or Deputy for Operations. Evidence seized during the course of a valid inspection or inventory is admissible, if relevant, at trial.
10. Forms. All NDW-USNA forms referred to in this instruction are available upon request from the Staff Judge Advocate's Office.



C. R. LARSON

Distribution:
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REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES

AT _____
(Location)

1. I, _____,
(Name) (Organization or Address)

having first been duly sworn, state that _____

2. I further state that _____

3. In view of the foregoing, the undersigned requests that permission be granted for the search of _____
(the person) (and) (the quarters

or billets) (and) (the automobile) ()

and seizure of _____
(items searched for)

(Signature)

(Typed name and organization)

5 March 1985

REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

J U R A T

I, _____, do hereby certify that the foregoing request for authorization to conduct search and seizure was subscribed and sworn to before me this _____ day of _____, 19____, by

_____, who is known to me to be _____
(Name of person making statement)

_____. And I do further certify that I am on
(Status)

this date empowered to administer oaths by authority of _____
(Authority)

_____.

(Signature)

(Typed name, grade, and Branch of Service)

(Command or Organization)

INSTRUCTIONS

1. Insert Country, State, and County in which request is acknowledged. If military considerations preclude disclosure of exact place of execution, insert "In a Foreign Country" or "In a possession of the U.S. outside of the continental U.S."
2. In paragraph 1, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.
3. In paragraph 2, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized are connected with the offense mentioned in paragraph 1, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. The facts stated in paragraphs 1 and 2 must be based on either the personal knowledge of the person signing the request or on hearsay information which he/she has plus the underlying circumstances from which he/she has concluded that the hearsay information is trustworthy. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 2 must set forth some of the underlying circumstances from which the person signing the request has concluded that the informant, whose identity need not be disclosed, or his/her information was trustworthy. Use additional pages if necessary.

5 March 1985

REQUEST FOR AUTHORIZATION TO CONDUCT SEARCH AND SEIZURE

4. In paragraph 3, the person, premises, or place to be searched and the property to be seized should be described with particularity and in detail. The types of items which may be seized are set forth in paragraphs 315 and 316 M.R.E. 1984 (Rev.).
5. "U.S. Armed Forces member on active duty," or "the spouse of a U.S. Armed Force member," or "a person serving with the Armed Forces," or other appropriate description of status.
6. "Manual of the Judge Advocate General of the Navy, section 2502a.(4)(b)," or "Art. 136, UCMJ," or other appropriate authority.

RECORD OF AUTHORIZATION FOR SEARCH

1. At _____ on _____, I was approached by _____
(Time) (Date) (Name)
_____ in his/her capacity as _____
(Duty)
who, having been first duly sworn, advised me that he/she suspected _____
(Name) of _____
(Offense)
_____ and
requested permission to search his/her _____
(Object or place)
for _____
(Items)

2. The reasons stated to me for suspecting the above named person were:

3. After carefully weighing the foregoing information, I was of the belief that the crime of _____
(had been) (was being) (was about to be) committed, that _____
_____ was the likely perpetrator thereof, that a search of
the object or area stated above would probably produce the items stated and that such items
were (the fruits of crime) (the instrumentalities of a crime) (contraband) (evidence).

4. I have therefore authorized _____
to search the place named for the property specified, and if the property be found there, to
seize it.

(Grade) Signature Title

(Date and time)

5 March 1985

RECORD OF AUTHORIZATION FOR SEARCH (Continued)

INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.

2. Other than his/her own prior knowledge of facts relevant thereto, all information considered by the individual empowered to authorize a search on the issue of probable cause must be provided under oath or affirmation. Accordingly, prior to receiving the information which purports to establish the requisite probable cause, the individual empowered to authorize the search will administer an oath to the person(s) providing the information. An example of an oath is as follows: Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?

(This requirement does not apply when all information considered by the individual empowered to authorize the search, other than his/her prior personal knowledge, consists of affidavits or other statements previously duly sworn to before another official empowered to administer oaths.)

3. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.

4. A search may be authorized only for the seizure of certain classes of items: (1) Fruits of a crime (the results of a crime such as stolen objects); (2) Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized); (3) Contraband (items, the mere possession of which is against the law--marijuana, etc.); (4) Evidence of crime (example: bloodstained clothing of an assault suspect).

5. Before authorizing a search probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man or woman to a natural belief that:

- a. An offense probably is about to be, is being, or has been committed; and
- b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and
- c. Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

In arriving at the above determination it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances. However, unreliable hearsay cannot alone constitute probable cause, such as where the hearsay is several times removed from its source or the information is received from an anonymous telephone call. Hearsay information from an informant may be considered if the information is reasonably corroborated or has been verified in some substantial part by other facts, circumstances or events. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists.

If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

CONSENT TO SEARCH

I, _____, have been advised that inquiry is being made in connection with _____

I have been advised of my right to not consent to a search of (my person) (the premises mentioned below).

I hereby authorize _____ and _____, who (has) (have been) identified to me as _____ (Position(s))

to conduct a complete search of my (person) (residence) (automobile) (wall locker) (_____) (_____) located at _____.

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire. This search may be conducted on _____ (Date).

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

Signature

WITNESSES

