



**UNITED STATES MARINE CORPS**  
MARINE CORPS RECRUIT DEPOT/EASTERN RECRUITING REGION  
P.O. BOX 19001  
PARRIS ISLAND, SOUTH CAROLINA 29905-9001

DepO 5522.2B  
SJA

23 JUN 2003

DEPOT ORDER 5522.2B

From: Commanding General  
To: Distribution List

Subj: SEARCHES AND SEIZURES

Ref: (a) Manual for Courts-Martial, United States, 2002  
(b) JAGINST 5800.7C

Encl: (1) Record of Authorization for Search  
(2) Consent to Search Form

1. Purpose. To establish guidelines for searches and seizures conducted aboard Marine Corps Recruit Depot, Parris Island.

2. Cancellation. DepO 5522.2A.

3. Authority

a. Reference (a), as interpreted by court decisions, empowers a commanding officer to authorize searches and seizures in a manner similar to that of civilian magistrates. As with civilian magistrates, the existence of probable cause upon which to authorize a search or seizure must be judged by a commander who is neutral and detached, rather than by one who is cast in the primary role of "law enforcement". There is nothing inherent in command that would disqualify a commander. However, circumstances may arise that would preclude the commander from acting as a neutral and detached magistrate. If the commander's role becomes one of gathering evidence or of formulating plans for the conduct of an investigation, then the commander is disqualified from authorizing searches or seizures. Specific examples would be:

(1) Directing the use of informants;

(2) Ordering the use of surveillance or undercover operatives;

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(3) Directing the use of detector dogs or other investigative techniques (this would not include valid health and comfort inspections); or

(4) Participation in any search authorized by the commander.

Such activity would invalidate an authorization that was otherwise proper.

b. In contrast, however, requests by the commander for investigative assistance from law enforcement agencies are not disqualifying. Similarly, mere knowledge of the status of an investigation will not invalidate an authorization. In this regard, it is important that this Order not be interpreted as denying the commander the option of personally conducting an investigation. Command prerogative or necessity may dictate personal involvement in an investigation, but, having once become so involved, the commander is no longer neutral and detached with respect to that investigation, and may not authorize a search incident to it.

c. When a commander becomes disqualified for any reason, the person seeking search authority should be immediately referred to the next higher echelon of command.

d. A commander may authorize the following kinds of searches, provided probable cause exists to believe that particular seizable property will be found thereon or therein:

1) Searches of persons who are subject to military law and who are present in a place under military control;

2) Searches of private property (e.g. vehicles, suitcases, clothing, packages, etc.) owned or possessed by a person subject to military control (civilians who have gained access to this installation have placed themselves under military control) which is physically present within an area subject to the commander's jurisdiction;

3) Searches of government owned or controlled property within the commander's jurisdiction which has been provided for personal or private use other than Depot housing (e.g., barracks, lockers, desks, 782 gear, etc.). Searches of Depot housing may be authorized only by the Commanding General. In the case of searches of barracks occupied by personnel from other units, the

commander within whose jurisdiction the barracks is situated retains the power to authorize searches. For example, the Commanding Officer, Fourth Recruit Training Battalion, has jurisdiction over all barracks within that command, irrespective of any command relationship to personnel residing therein.

e. With regard to government owned or controlled property, the private use of which has been prohibited (e.g., vehicles, aircraft, buildings other than quarters, etc.), no one has a reasonable expectation of privacy and a search therefore may proceed without an authorization or probable cause. In the case of government property provided for official use, but in which personal items may be kept, the Supreme Court has adopted a middle position. A government desk or office may be searched without an authorization or probable cause for work related purposes; even though personal items may also be present. So long as the search objective is not for evidence of wrongdoing, but rather for items or information relating to the work place (e.g., files, correspondence, an address while on leave, etc.), the search of such quasi-private areas for such administrative purposes may be conducted by the appropriate supervisor. Where wrongdoing in the workspace is suspected, legal advice should be sought before proceeding with a search. Legal advice should be obtained any time doubt exists as to the propriety or lawfulness of an anticipated search.

f. The executive officer or other successor in command assumes the power to authorize searches in the absence of the commander. In determining whether command has devolved to a successor in any given setting, neither the duration of the commander's absence, the distance removed from the command, nor a temporary inability to contact the commander is determinative. If the commander is in a duty status and not on leave or TAD, then command has not devolved. Where, however, a commander is on leave, TAD, or not in a duty status (e.g., hospitalized), command will ordinarily devolve to a successor. It should be noted that Officers of the Day and other watchstanders are not successors to the command and may not authorize searches based on that status alone.

g. Ordinarily a request for search authorization should be directed to the commander exercising control over the area or object to be searched. An otherwise lawful search will not be invalidated, however, merely because the search was authorized by a commander senior in the chain of command to the cognizable commander.

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h. From time to time the Commanding General may direct that the Depot Provost Marshal conduct random gate inspections at the main gate area or at Horse Island. The Commanding General will specify in writing the method of selecting the vehicles to be inspected, the date, time and location of the inspections, and the procedures to be utilized should contraband or other seizable property be found.

i. Military Police, Criminal Investigation Division (CID) agents, and Naval Criminal Investigative Service (NCIS) agents, while in a duty status, are authorized to search any vehicle, object or place within the Depot which is owned, possessed, or operated by any person, without a search warrant or command authorization under the following circumstances:

(1) The owner, possessor, or operator voluntarily consents;

(2) The search is incident to the lawful apprehension (arrest) of a person. A search is "incident" only if it is limited to the person apprehended and the area within that person's immediate control (to include the passenger compartment of a vehicle and any unlocked containers therein) and the search immediately precedes, immediately follows, or is contemporaneous with the apprehension of the person; or

(3) The search is conducted under circumstances wherein probable cause exists to believe, first, that seizable property is in a particular place, and second, that the destruction or removal of such property is imminent.

j. Any officer or staff noncommissioned officer of this command who is present and in the execution of military duties is authorized to search any place, vehicle, or object within the Depot, without the cognizant commander's prior approval, when, and only when, facts and circumstances exist at the level of probable cause to believe seizable property is in a particular place and probable cause also exists to believe that the destruction or removal of such property is imminent. If the removal or destruction of the property may be prevented simply by seizing or otherwise securing the person, place, or object to be searched pending a search authorization, such action is clearly the preferable course. Probable cause to believe seizable property will be found upon a search is essential to the lawfulness of either course selected. When taking action under this section, the officer or staff noncommissioned officer must determine that the search to be conducted meets all of the

circumstances in the appropriate category as set forth in paragraph 3d above. In the event a search takes place pursuant to this authority, the officer or staff noncommissioned officer conducting it shall notify the unit commander or duty officer as soon as practicable following the search.

#### 4. Probable Cause

a. Seized items will be admissible in subsequent court proceedings only if the authorization to search was based upon probable cause (or if one of the limited exceptions applies). That is, before a search may be ordered, the authorizing officer must be in possession of facts (as opposed to conclusions or speculations) which would lead a reasonable person to believe that the proposed search of a specified person, object, or area will disclose specified items, such as:

- (1) Fruits of an offense;
- (2) Instrumentalities with which an offense was committed;
- (3) Evidence of the offense or the identity of the perpetrator; or
- (4) Contraband.

b. Unless circumstances demand urgent action, an affidavit is the preferred way to communicate and preserve the facts that an authorizing officer considers when determining whether probable cause exists to authorize a search. When circumstances requiring immediate action preclude the writing of an affidavit, the facts should still be obtained under oath to better establish credibility. The JAGMAN provides that all persons empowered to authorize a search have the authority to administer oaths. An appropriate oath is printed on page 2, paragraph 2 of enclosure (1).

#### 5. Criteria

a. An authorizing officer will exercise judicial discretion in deciding whether or not to authorize a search, being careful to satisfy the criteria set forth in paragraphs 3d, 4a and 4b above. In this regard, no search will be ordered without a calm and dispassionate review of the information in order to determine whether probable cause exists.

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b. Before deciding whether to order a search of persons or property described in paragraph 3d above, the authorizing officer must take all reasonable precautions to ensure that the source of information is credible, and that the information provided by that source is reliable (i.e., obtained first hand, rather than gleaned from rumors or conjecture). Commanders will consider the totality of the circumstances when making these determinations.

(1) To be deemed credible, the provider of facts should be either personally known by the authorizing officer to be trustworthy, a police officer, an eyewitness to or a victim of an offense, a co-actor who confesses, or one who has been a reliable informant in the past.

(2) To be deemed reliable, the authorizing officer must be satisfied that the provider of facts has a sound factual basis for the conclusions drawn (that there is good reason for the provider of information to know the purported facts).

(a) With regard to informants, should the reliability of the information be unknown or difficult to determine, sufficient corroboration of the details of the informant's tip may be supplied by independent investigative work.

(b) If the search authorization is based upon the actions of a police dog, the authorizing officer must independently form an opinion that the particular dog used is reliable (based upon personal knowledge of the dog or upon facts presented concerning the dog's success rate). The authorizing officer must also be apprised of the facts surrounding the dog's "alert." (How does this particular dog "alert"; what did the dog do on this occasion?) After obtaining such information regarding the dog's reliability and actions, the authorizing officer must determine whether such information constitutes probable cause. In making this determination, the authorizing officer must remember that his function is judicial, as opposed to a disciplinary.

c. It must be recognized that hasty or thoughtless decisions to authorize searches often result in evidence being rendered inadmissible at trial. Rather than conducting an immediate search, alternative responses should be considered. Posting a guard or securing a space will often prevent tampering with evidence or contraband while further inquiry is conducted to develop more completely the facts and circumstances resulting in the request for authorization to search. Therefore, in all

cases, due consideration should be given to utilizing one of these methods prior to authorizing a search.

## 6. Instructions

a. Any person authorizing a search pursuant to this Order may do so orally or in writing as desired, but in every case the order shall be specific concerning who is to conduct the search, what person or property is to be searched and what evidence, contraband, or information is expected to be found on such persons or at such location. In this regard the authorizing officer should, at the time the search is ordered, or as soon thereafter as practicable, use enclosure (1), Record of Authorization for Search, to set forth in writing all pertinent details concerning the authorization to search. At a minimum the Record of Authorization for Search should include the following facts:

- 1) The time and date of authorization;
- 2) The particular persons or property to be searched;
- 3) The identity of the persons authorized to conduct the search;
- 4) The items of evidence, contraband, or information that are expected to be found;
- 5) A complete discussion of the facts and information considered in determining whether or not to authorize a search; and
- 6) What effort, if any, was made to confirm or corroborate these facts and information.

b. The Record of Authorization for Search should be retained by the commanding officer and should be supplemented at the earliest practicable time by a written statement, setting forth any items seized as a result of the search, together with complete details of their seizure and setting forth the location of their storage after seizure. NCIS regulations may require that the authorizing officer also sign appropriate NCIS search authorization forms.

c. Where possible, searches authorized in accordance with this Order will be conducted by at least two persons not personally interested in the case. At least one should

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ordinarily be a commissioned officer or staff noncommissioned officer except when contrary to accepted NCIS, CID, or Military Police policy.

d. Personnel conducting a search properly authorized by this Order will search only those persons and/or spaces so authorized. If, in the course of the search, facts or circumstances are encountered which make it desirable to extend the scope of the search beyond the original authority, such shall immediately be conveyed to the authorizing officer so that further instructions, if any, can be given.

e. In addition to the objects of a search authorized pursuant to this Order, those conducting the search may seize without further authorization all other items which come to the searcher's attention (within "plain view") during the course of the search which, at the level of probable cause, fall within the following categories:

(1) Fruits of any offense against the Uniform Code of Military Justice (e.g., stolen property);

(2) Instrumentalities with or by which any such offense was committed (weapons, burglary tools, etc.);

(3) Any other evidence of the commission of any such offense or of the identity of the offender (distinctive clothing, etc.); and/or

(4) Property, the possession of which is prohibited (contraband).

f. Any property seized shall be securely tagged or marked with the following information:

(1) Date and time of the seizure;

(2) Identification of the person or property being searched;

(3) Location of the seized article when discovered; and

(4) Initials of the person who seized the item.

g. No person conducting a search shall tamper with any seized item. The searcher shall personally retain such items for delivery to the commanding officer unless NCIS, CID, or Military



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Police authorities assume custody in accordance with their respective regulations. In the event that size or other considerations preclude the movement of any seized items, one of the persons conducting the search shall personally stand guard over the same until the authorizing officer can be contacted for further instructions.

h. All authorizing officers who come into possession of seized property shall ensure that such property is correctly tagged or marked, to include date, time, and initials when received by the authorizing officer, and either relinquished to law enforcement authorities or physically secured in a space not accessible to others. These actions help to ensure a proper chain of custody.

i. Frequently it will appear desirable to interrogate suspects in connection with an apparent offense. It is essential that the function of interrogation be kept strictly separate from that of conducting a search pursuant to this Order. This Order does not establish any regulations or guidelines for the conduct of interrogations.

j. Nothing in this Order shall be construed as limiting or affecting in any way the authority to conduct searches pursuant to a lawful search warrant issued by a civilian federal court of competent jurisdiction.

k. Anyone conducting a search authorized pursuant to this Order shall, in addition to the authorization, first attempt to obtain the suspect's consent to search. It must be remembered that any consent must be freely and voluntarily given. Thus, a suspect's mere submission to authority or mere acquiescence to another's announced intention to search does not constitute consent. In this light, the following guidelines should be adhered to:

(1) Whenever possible, do not apprehend the suspect prior to requesting consent;

(2) Do not use coercion, duress, or inducement and avoid the use of any authority, rank, or position in requesting consent;

(3) Consent shall not be requested from a suspect whose physical or mental faculties appear to be impaired in any way, such as when the suspect is under the influence of drugs or alcohol;

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(4) The suspect must not be informed that the person conducting the search has authorization to search until after the suspect demonstrates an unwillingness to furnish consent;

(5) Similarly, a suspect must not be told the search will be conducted whether or not consent is given;

(6) Before carrying out a search, if practical under the circumstances, prepare a Consent to Search Form (see enclosure (2)), being careful to completely and accurately provide all necessary information;

(7) Ensure that the suspect signs the Consent to Search Form in the presence of at least one witness. Refusal to sign, however, will not invalidate verbal consent that is otherwise voluntarily given;

(8) There is no legal requirement that the suspect be advised that consent to search need not be given. However, the fact that the suspect was so informed may become a factor when determining whether consent was voluntarily given;

(9) Just as with a search that is conducted pursuant to a written authorization, the scope of a search is strictly limited to the scope of the consent given. For this reason, when a search is based in whole or in part upon the consent of the suspect, the person conducting the search will be careful not to exceed the limits of the area covered by that consent; and

(10) The suspect must also be advised that consent may be withdrawn at any point.

## 7. Body Views and Intrusions

a. Evidence obtained from body views and intrusions may be admissible at trial when relevant and when conducted in accordance with the Military Rules of Evidence (MRE). To ensure compliance with these rules, commanders should contact the Staff Judge Advocate, Law Center Director or Chief Trial Counsel whenever possible before examining bodies or extracting body fluids.

### b. Visual examination of the body

(1) Consensual. Visual examination of the unclothed body may be made with the consent of the individual.

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2) Involuntary. An involuntary display of the unclothed body, including a visual examination of body cavities, may be required only if conducted in a reasonable fashion and authorized under the applicable provision of the MRE. A search may be permissible when conducted in consonance with the applicable MRE of each of the following: (a) in conjunction with an inspection or inventory; (b) a reasonable suspicion exists that weapons, contraband, or evidence of a crime is concealed on the body of the person to be searched; (c) the search is to be conducted within the brig or other holding areas if reasonably necessary to maintain security; (d) the search is incident to lawful apprehension; (e) an emergency situation exists; or (f) probable cause to search exists.

(3) An examination of the unclothed body should be conducted whenever practicable by a person of the same sex as that of the person being examined.

c. Intrusion into body cavities. A reasonable nonconsensual physical intrusion into the mouth, nose, and ears may be made when a visual examination of the body is permissible under paragraph 7b above. Nonconsensual intrusions into other body cavities may be made:

(1) For purposes of seizure. When there is a clear indication that weapons, contraband, or other evidence of crime is present, an intrusion may be made in a reasonable fashion by a person with appropriate medical qualifications to remove such items; or

(2) For purposes of search. To search for weapons, contraband, or evidence of crime if authorized by a search warrant or search authorization and conducted by a person with appropriate medical qualifications.

d. Extraction of body fluids. Nonconsensual extraction of body fluids including blood, urine, and semen, may be made from the body of an individual pursuant to a search warrant or a search authorization. Nonconsensual extraction of body fluids may be made without a warrant or authorization only when there is a clear indication that evidence of crime will be found, and that there is reason to believe that the delay that would result if a warrant or authorization were sought could result in the destruction of the evidence. Involuntary extraction of body fluids must be done in a reasonable fashion by a person with appropriate medical qualifications.

e. Other intrusive searches. Nonconsensual intrusive searches of the body made to locate or obtain weapons, contraband, or evidence of crime not covered by paragraphs 7b and 7c above may be made only upon a search warrant or search authorization, and only if the search is conducted in a reasonable fashion by a person with appropriate medical qualifications and the health of the person to be searched is not endangered. Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search. A person who is neither a suspect nor an accused may not be compelled to submit to an intrusive search of the body for the sole purpose of obtaining evidence of crime.

## 8. Inspections

a. Nothing in this instruction shall be construed as limiting or affecting in any way the authority of commanders to conduct inspections of areas within their responsibility in the interest of the security, health, safety, or welfare of all personnel within the command. Recent court decisions have made it clear that during a traditional military inspection, no service person whose area is subject to the inspection may reasonably expect any privacy within that area. It should be emphasized that these inspections must not be utilized as a subterfuge to avoid the probable cause requirements that apply to searches for evidence of a crime. Contraband and other seizable property discovered during the course of an inspection should be admissible evidence provided the inspection is:

- (1) previously scheduled;
- (2) conducted in conformity with normal operating procedures of the command;
- (3) reasonably related to assuring the readiness of unit personnel;
- (4) limited to the predetermined zone, or area of inspection;
- (5) limited to the purpose of the inspection;
- (6) applied uniformly to all persons and areas inspected.

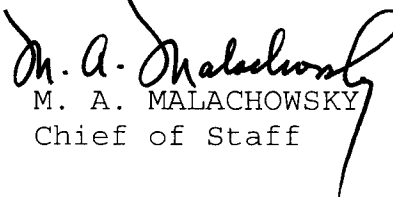
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b. Unscheduled inspections may be conducted for the purpose of locating and confiscating weapons, drugs, or other contraband provided

(1) Facts and circumstances provide good reason to suspect that such property is present within the command; and

(2) The circumstances are such that security, military fitness and good order and discipline are being adversely affected by the presence of such property.

9. Guidance. Authorizing officials should consult the Law Center Director, Chief Trial Counsel, or Staff Judge Advocate for further guidance and advice as required. Such officials may also contact the Criminal Investigative Division of the Provost Marshal's Office for assistance in conducting searches and seizures.

  
M. A. MALACHOWSKY  
Chief of Staff

DISTRIBUTION: A

Record of Authorization for Search

1. At \_\_\_\_\_ on \_\_\_\_\_ I was approached by \_\_\_\_\_  
Time Date Name  
in his capacity as \_\_\_\_\_ who having been first duly sworn,  
Duty  
advised me that he suspected \_\_\_\_\_ of \_\_\_\_\_  
Name Offense  
and requested permission to search his \_\_\_\_\_ for  
Object or Place  
\_\_\_\_\_  
Items

2. The reasons given 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 the 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

ENCLOSURE (1)

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Instructions  
(Record of Authorization For Search)

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 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 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.) or (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 to a natural belief that:
  - a. An offense probably is about to be, or has been, committed;
  - 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.

ENCLOSURE (1)

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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.

ENCLOSURE (1)



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Consent to Search

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

\_\_\_\_\_. I have been advised of my right not to consent to a search of [my person] [the premises mentioned below]. I hereby authorize \_\_\_\_\_

\_\_\_\_\_, who [has] [have been] identified to me

as \_\_\_\_\_, 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

\_\_\_\_\_  
\_\_\_\_\_

ENCLOSURE (2)