



DEPARTMENT OF THE NAVY
COMMANDING OFFICER
NAVAL STATION
PEARL HARBOR, HAWAII 96860-6000

NAVSTAPEARLINST 5800.1D CH-1
017
30 AUG 1993

NAVSTA PEARL INSTRUCTION 5800.1D CHANGE TRANSMITTAL 1

Subj: SEARCH AND SEIZURE

Encl: (1) New enclosure (1)

1. Purpose. To promulgate change 1 to subject instruction.
2. Action. Replace enclosure (1) with enclosure (1) of this transmittal.


K. M. KENNEDY

Distribution:
NAVSTAPEARLINST 5605.2D
List I, Case 1 (NAVSTA PEARL depts/offices)

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Pearl Harbor, HI 96860-6000



FINDING THE EXISTENCE OF PROBABLE CAUSE
TO AUTHORIZE A SEARCH

When asked to authorize a search, the commanding officer or appropriate designee should swear in the applicant and ask the following questions and listen to the responses to ascertain if probable cause exists.

1. RAISE YOUR RIGHT HAND. "Do you, (name of applicant), 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?"

2. WHAT IS THE NAME AND DUTY STATION OF THE APPLICANT FOR THE SEARCH AUTHORIZATION?

3. WHAT IS THE LOCATION AND DESCRIPTION OF THE PREMISES, OBJECT, OR PERSON TO BE SEARCHED?

a. Do I have jurisdiction over the person or area to be searched?

b. Is the person or place described particularly?

4. WHAT FACTS INDICATE THE PROPERTY TO BE SEIZED IS ACTUALLY LOCATED IN THE PLACE TO BE SEARCHED?

5. HOW OLD IS THE INFORMATION? Has a significant period of time elapsed so you believe the described property is no longer in the requested location?

6. WHO IS THE SOURCE OF THIS INFORMATION? If the source of the information is the applicant, ask the applicant what type of training the applicant has had investigating these types of offenses and whether the information has been or can be corroborated. If the source of this information is any other person than the applicant before you, consult the checklist for informants.

CHECKLIST FOR INFORMANTS

1. The commanding officer must find what facts, not conclusions, were given by the informant to indicate that the items sought will be in the place described.

2. The commanding officer must find that either the informant or the information is reliable. To gauge the informants reliability, ask:

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a. How long has the applicant known the informant?

b. Has this informant provided information before?
(i.e. does the informant have a prior record suggesting
reliability?)

(1) Has the past information always proven
correct? Almost? Always? Never?

(2) Has the informant ever provided any false or
misleading information?

(3) (If drug case) Has the informant ever
identified drugs in the presence of the applicant?

(4) Has any prior information resulted in
conviction? Acquittal? Are there any cases still awaiting
trial?

c. What other situational background information was
provided by the informant that support credibility? (e.g.,
accurate description of interior of locker room, etc.)

(1) Statement against interest - is the
information given by the informant sufficiently adverse to the
fiscal or penal interest of the informant so that the information
may reasonably be presumed to be accurate?

3. Questions to determine that the information provided is
reliable:

a. Does the applicant possess other information from
known reliable sources which indicates what the informant says is
true?

b. Do you possess information (e.g., personal knowledge)
which indicates what the informant says is true?

Corroborating detail - has enough detail of the
informant's information been verified so the remainder can
reasonably be presumed to be accurate?

In the case of fungible items like drugs, how old is
the corroborative information?"

7. IS THERE ANY FURTHER INFORMATION YOU BELIEVE WILL
PROVIDE GROUNDS FOR THE SEARCH FOR, AND SEIZURE OF, THIS
PROPERTY?

8. ARE YOU WITHHOLDING ANY INFORMATION YOU POSSESS ON THIS
CASE WHICH MAY AFFECT THIS REQUEST TO ME TO AUTHORIZE THE SEARCH?

If you are now satisfied with the reliability of the information and of the person from whom you received it, and you now entertain a reasonable belief that the items are where they are said to be, you may now authorize the search and/or seizure as follows: The suggested format should be provided by the person requesting the search authorization. An example is:

"(Applicant's Name), I find that probable cause exists for the issuance of authorization to search (location or person*) for the following items: (description of items sought*)

(*See attached guide on describing persons and places searched and items sought.)

EXECUTION OF THE SEARCH WARRANT (MRE 315(h)(1))

To the applicant - "Please provide notice of this search authorization to the (accused/suspect) if possible."

INVENTORY OF ITEMS SEIZED (MRE 315(h)(2))

To the applicant - Inventory of items seized - "You are hereby directed to inventory all items seized pursuant to this authorization and provide a copy of this inventory to (accused/suspect)."

Enclosure (1)



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NAVSTAPEARLINST 5800.1D
O17

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NAVSTA PEARL INSTRUCTION 5800.1D

Subj: SEARCH AND SEIZURE

Ref: (a) Military Rules of Evidence, 315, (MCM 1984)

- Encl: (1) Finding the Existence of Probable Cause to Authorize a Search
(2) Searches: Describing What to Look For and Where to Look
(3) Request for Authorization to Conduct Search and Seizure
(4) Record of Authorization for Search

1. Purpose. To disseminate information on search and seizure on board Naval Station Pearl Harbor, consistent with the legal requirements of reference (a).

2. Cancellation. NAVSTAPEARLINST 5800.1C

3. Definition. Authorization to Search. An "authorization to search" is express permission, written or oral, issued by competent military authority to search a person or an area for specified property, evidence, or person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner. It includes an authorization to seize bodily fluids such as blood or urine, and to intrude into body cavities.

4. Discussion

a. Only the Commanding Officer may authorize a search. No one acting on behalf of the Commanding Officer may authorize a search unless that person has been designated as "Commanding Officer (Acting)." The XO, CDO or OOD may not authorize a search.

b. The Commanding Officer may authorize a search only in an area of Naval Station responsibility and control. The Commanding Officer may also authorize a search of a service member assigned to Naval Station, wherever the member is located.

c. The Commanding Officer may authorize a search whenever there is probable cause to believe that a specified person, specified property or evidence will be found at a certain place

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or on a certain person. "Probable cause" is a reasonable belief.

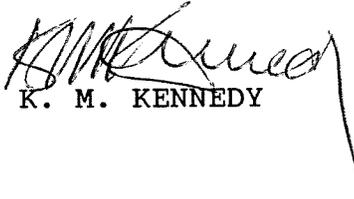
5. Action

a. The person requesting search authorization must first contact the CDO, identify himself or herself and provide information concerning who or what is desired to be searched and why the person thinks the search will result in finding an individual, property or evidence. The individual, property or evidence must be described in detail.

b. The CDO will notify the Staff Judge Advocate to ensure there is jurisdiction and probable cause. After the SJA is notified, the CDO must contact the Commanding Officer for search authorization. All requests for search authorization received by the CDO will be reported to the Commanding Officer, regardless of jurisdiction and probable cause determination.

c. When the Commanding Officer has given permission to conduct a search, enclosures (1) through (4) may be used for guidance; however, their use is not mandatory.

d. Documentation and/or testimony regarding search procedures may later be required in legal proceedings. A written record of the process must therefore be maintained.


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FINDING THE EXISTENCE OF PROBABLE CAUSE
TO AUTHORIZE A SEARCH

When asked to authorize a search, the commanding officer or appropriate designee should ask the following questions and listen to the responses to ascertain if probable cause exists.

1. WHAT IS THE NAME AND DUTY STATION OF THE APPLICANT FOR THE SEARCH AUTHORIZATION?

2. RAISE YOUR RIGHT HAND. "Do you, (name of applicant), 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?"

3. WHAT IS THE LOCATION AND DESCRIPTION OF THE PREMISES, OBJECT, OR PERSON TO BE SEARCHED?

Ask yourself: Is the person or area one over which I have jurisdiction?
Is the person or place described particularly?

4. WHAT FACTS DO YOU HAVE WHICH INDICATE THAT THE PROPERTY YOU WISH TO SEARCH FOR AND SEIZE IS ACTUALLY LOCATED ON THE PERSON OR IN THE PLACE YOU WANT TO SEARCH?

5. WHO IS THE SOURCE OF THIS INFORMATION?

Option 1 - INFORMANT

When the source of the applicant's information is someone other than the applicant, you should ask the following questions about the informant:

a. What specific facts (not conclusions) did the informant give you that indicate that the items sought will be in the place or on the person to be searched?

b. Is the informant reliable?

Known Informant -

Good citizen - is the character of the informant, as known by the individual making the probable cause determination, such as to make it reasonable to presume that the information is accurate?

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Unknown Informant -

(1) How long has the applicant known the informant?

(2) Has the informant provided information in the past? (i.e. does the informant have a prior record suggesting reliability?)

(a) Has the informant's information proven correct in the past? Almost always? Never?

(b) Has the informant ever provided any false or misleading information?

(c) Has any of the informant's information resulted in convictions in the past? Were there acquittals in any of these cases? Are any of these cases still awaiting trial?

(3) (If drug case) Has the informant ever identified drugs in the presence of the applicant?

(4) What other situational or background information provided by the informant supports his credibility?

Statement against interest - is the information given by the informant sufficiently adverse to the fiscal or penal interest of the informant so that the information may reasonably be presumed to be accurate?

c. Is the informant's information reliable? Does the applicant possess other information from other sources (e.g., his own observations or knowledge) which indicates that the informant's information is true?

Corroborating detail - has enough detail of the informant's information been verified so that the remainder can reasonably be presumed to be accurate?

You must find either that the informant is reliable (Question b) or that his information is reliable (Question c). If you are satisfied that either the informant or the information is reliable, proceed to questions 6 and 7.

Option 2 - APPLICANT

If the source is the person you are questioning, proceed as follows:

a. What specific facts (not conclusions) do you know that indicate that the items sought will be in the place or on the person to be searched?

b. Is the source of this information reliable? What training have you had in investigating offenses of this type (or identifying this type of contraband); OR

c. If this person is not reliable, is the information provided reliable? Has it been or can it be corroborated?

6. IS THERE ANY FURTHER INFORMATION YOU BELIEVE WILL PROVIDE GROUNDS FOR THE SEARCH FOR, AND SEIZURE OF, THIS PROPERTY?

7. ARE YOU WITHHOLDING ANY INFORMATION YOU POSSESS ON THIS CASE WHICH MAY AFFECT THIS REQUEST TO ME TO AUTHORIZE THE SEARCH?

If you are now satisfied with the reliability of the information and of the person from whom you received it, and you now entertain a reasonable belief that the items are where they are said to be, you may now authorize the search and/or seizure as follows: The suggested format should be provided by the person requesting the search authorization. An example is:

"(Applicant's Name), I find that probable cause exists for the issuance of authorization to search (location or person*) for the following items: (description of items sought*)

(*See attached guide on describing persons and places searched and items sought.)

EXECUTION OF THE SEARCH WARRANT (MRE 315(h)(1))

To the applicant - "Please provide notice of this search authorization to the (accused/suspect) if possible."

INVENTORY OF ITEMS SEIZED (MRE 315(h)(2))

To the applicant - Inventory of items seized - "You are hereby directed to inventory all items seized pursuant to this authorization and provide a copy of this inventory to (accused/suspect)."

SEARCHES: DESCRIBING WHAT TO LOOK FOR AND WHERE TO LOOK

REQUIREMENT OF SPECIFICITY: No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

DESCRIPTION OF THE PLACE OR PERSON TO BE SEARCHED:

PERSONS: Always include all known facts about the individual, such as name, rank, SSN, and unit. If name is unknown, include personal description, places frequented, known associates, make of auto driven, usual attire, etc.

PLACES: Be specific, with great effort to prevent the area which you are ordering searched from being broadened, thus giving rise to a possible defense claim that the search was a "fishing expedition."

DESCRIPTION OF ITEMS SOUGHT:

BASIC RULE: Go from the general to the specific description.

Example: If the purpose of the search is to discover and seize a Thompson submachine gun, the authorization should state, "an automatic firearm, to wit: one Thompson submachine gun."

CONTRABAND: Something which is illegal to possess where found.

Example: "Heroin, paraphernalia for the use, packaging, and sale of said contraband, including syringes, needles, lactose, and rubber tubing."
(NOTE: only if supported by facts presented.)

FRUITS OF A CRIME: Usually the stolen property.

Example: Suspected stolen property, to wit: one G. E. clock, light blue in color, and one Sony fifteen-inch portable

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TV, tan in color with black knobs..."

INSTRUMENTALITIES OF A CRIME: Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including cigarette rolling papers, scales, and plastic baggies..."

OTHER EVIDENCE:

Example: "Papers, documents, and effects which show dominion and control of said area, including canceled mail, stenciled clothing, wallets, and receipts...."

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REQUEST FOR AUTHORIZATION
TO CONDUCT SEARCH AND SEIZURE

WITH THE UNITED STATES ARMED FORCES

AT _____
(Location)¹

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

having first been duly sworn, state that² _____

2. I further state that³ _____

3. In view of the foregoing, the undersigned requests that per-
mission be granted for the search of⁴ _____
(the person)

(and) (the quarters or billets) (and)

(the automobile)(_____) and seizure of _____

(items searched for)

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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 has plus the underlying circumstances from which he 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 information was trustworthy. Use additional pages if necessary.

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 paragraph 152, MCM, 1969 (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.

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RECORD OF AUTHORIZATION FOR SEARCH (Continued)

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).