

Conducting Searches And Seizures

The Fourth Amendment to the Constitution provides that the right of the people to be free from unreasonable searches and seizures shall not be violated. It also provides that no warrants shall be issued except upon “probable cause.” And without probable cause no search is admissible in a court of law unless it is incident to a lawful apprehension, conducted with the consent of the person searched, or is otherwise legal.

There is probable cause to search when there are reasonable grounds to believe that items connected with criminal activity are located in the place (room and barracks, privately owned vehicle, or quarters) or on the person to be searched. MP must know and understand search and seizure procedures to function effectively within the law.

During raids MP must adhere to laws governing jurisdiction and authority, search and seizure, apprehension, and use of force in order to ensure evidence obtained is admissible in court. MP must understand the procedures involved in obtaining a search warrant or authorization. Probable cause must be shown before getting a search authorization. The seizure of items for use as evidence is limited. The items must be specified in the search authorization, or they must be in plain view; any illegal articles that are found are confiscated. Seized property or evidence is receipted. Receipting for seized property establishes its accountability and chain of custody.

CONTENTS	Page
DETERMINING SCOPE OF AUTHORIZED SEARCH	93
Authorizing a Search	94
Determining Probable Cause	94
Reliability Test	95
Plain View	96
DETERMINING ARTICLES SUBJECT TO SEARCH AND SEIZURE	96
CONDUCTING ENTRY AND SEARCH TO PROTECT PERSONS OR PROPERTY	97
CONDUCTING AN IDENTIFICATION SEARCH	97
CONDUCTING AN AUTOMOBILE SEARCH	98
CONDUCTING AN AREA SEARCH	99
CONDUCTING A CONSENT SEARCH.....	100
CONDUCTING A SEARCH OF ABANDONED PROPERTY.....	100
CONDUCTING A TRASH AND GARBAGE CONTAINER SEARCH	100
CONDUCTING A SEARCH OF PREMISES WITHOUT RIGHT TO PRIVACY.....	100
CONDUCTING A FIRE SEARCH	101
MAINTAINING STATUS QUO OR FREEZING THE SITUATION	101
CONDUCTING A BODY CAVITY SEARCH.....	101
SEIZING BODY FLUIDS	101
CONDUCTING A FRISK	101
CONDUCTING INVENTORIES	102
CONDUCTING INSPECTIONS	102
CONDUCTING RAIDS	103
Planning a Raid	103
Determining Raiding Party Composition.....	105
Determining Equipment Requirements.	106
Performing Reconnaissance	106
Executing a Raid	107

DETERMINING SCOPE OF AN AUTHORIZED SEARCH

Once authorization to search has been obtained) the person conducting the search must carefully comply with the limitations imposed by the authorization. Only those locations described in the authorization may be searched and the search may be conducted only in areas where it is likely that the object of the search will be found. For example, if an

investigator has authority to search the quarters of a subject, the investigator may not search a car parked on the road outside. Likewise, if the authorization states that the MP is looking for a 25-inch television, that MP may not look into areas unlikely to contain a television, such as a medicine cabinet or file cabinet.

An authorization to search for contraband implicitly carries the limited authority to detain occupants of a home, apartment, or barracks room while the search is conducted. Also, the MP may detain occupants leaving the premises at the time the MP arrive to execute the search authorization.

AUTHORIZING A SEARCH

The commander may authorize the search of a person or place under his command when there is probable cause to believe that items connected with criminal activities are located in the place or on the person to be searched. When time permits, the commander consults the office of the SJA. A commander may not delegate his or her authority to authorize a search to another individual in the unit. However, the power may devolve to the next senior person present when the commander is absent or when circumstances are such that the commander cannot be contacted.

When there is a military magistrate or judge on an installation, law enforcement personnel may obtain the magistrate's or judge's authorization to search, following the procedures set forth in AR 27-10. Law enforcement personnel can also seek the commander's authorization. Federal magistrates have powers similar to military judges but are limited in area and authority by their respective district court.

AR 27-10 sets out the procedures for obtaining an authorization to search. Information in the form of statements, either written or oral (and which can be transmitted by telephone or radio), must be presented to a commander, magistrate, or military judge. It is not mandatory that these statements be sworn, but an oath may be required by the authorizing official and, in a close case, an oath may be the factor which determines admissibility. The authorizing official will then decide, based upon the statements, whether or not probable cause to search exists. Once the authorizing official determines that probable cause exists, the official will issue either an oral or a written authorization to search. Even though there is no

general requirement that probable cause statements or the authorization to search be in writing, various commands or units may impose additional requirements. Strict adherence to these requirements is mandatory. The authorizing official must specify the place to be searched and the things to be seized.

DETERMINING PROBABLE CAUSE

To determine if probable cause exists, the authorizing official will evaluate whether or not the information furnished to him is reliable and reasonably warrants his acting on the basis of that information. The overall issue of reasonableness is composed of two elements. The first is the source's basis of knowledge, which may be established by-

- Personal observation.
- Statement of the person or accomplice to be searched.
- Self-verifying detail.
- Corroboration.

The basis of knowledge can be established by showing that the commander personally observed the criminal activities himself, or that he is basing his authorization on the fact that a third party personally observed the criminal activity, that this fact has been related to him, and that such information has been corroborated or substantiated.

In the drug area, personal observation must also include facts indicating there is a basis for belief that what was seen were drugs (that is, the commander has had a class on drug identification, or the third party has had a class on drug identification or has furnished reliable information in the past as to the particular drug in question).

The commander or the person seeking the authorization from the commander may have trustworthy information that items connected with criminal activities are located in the place to be searched based on information obtained from a statement of the individual to be searched or an accomplice of the individual to be searched.

One way to pass the basis of knowledge test is by showing that the tip was so detailed that the information must have been obtained as a result of a personal observation by the informant or from a statement of the defendant or an accomplice. The best example of when a tip is self-verifying is the one the Supreme Court used in *Draper v. United States* (*Illinois v. Gates, 1983; Massachusetts v. Upton, 1984*).

In the above case, the arresting police officer had received a tip from an informant that the defendant had departed Denver, Colorado, to travel to Chicago. The informant (1) said the defendant would return by train on 8 or 9 September; (2) described the defendant's physical appearance; (3) indicated that the defendant would be carrying a tan zipper bag; (4) said the defendant walks with a fast gait; and (5) said the defendant would be carrying heroin. Before making the arrest, the arresting police officer verified facts 1 through 4.

The court indicated that the tip was so detailed that it could conclude that the informant obtained his information in a trustworthy manner, such as by personal observation or a statement of the defendant or a combination of the two.

When the police officer can verify a number of the items listed in the informant's tip, the conclusion is that the other items in the tip must also be true. The best example of corroboration is, again, *Draper v. United States*. A number of courts have indicated that the Draper situation could apply to not only train stations but airports or rendezvous-type situations with automobiles. In the case of an anonymous tip, this corroboration is extremely important and may be essential to a finding of probable cause.

Reliability Test

The commander must also be satisfied as to the credibility of the person furnishing the information. This has been called the reliability test and may be established by one or more of the following:

- Demeanor of the individual furnishing the information to the commander.
- Statement of past reliability.
- Corroboration.
- Statement from victim or eyewitness of offense.
- Declaration against interest.
- Information from other law enforcement officials.
- Information obtained from senior NCOs and above as a result of being passed through the chain of command.

When the information is personally given to the commander—not by an MP, but by the third party who obtained the information—the commander can judge the individual source's reliability at that time. In many cases the individual may be a member of the commander's unit; thus, the commander is in the best situation to judge the credibility of the person. Even when the person is not a member of the authorizing commander's unit, it is an eyeball-to-eyeball situation in which the commander can question the individual and determine the consistency of statements made by the individual. The eyeball-to-eyeball situation may either lend to or detract from establishing credibility. The same is true when the individual is a member of the commander's unit. Again, the commander's personal knowledge of the informant can lend to or detract from establishing credibility. Corroboration and demeanor of the person are particularly important when questioning first-time sources with no established record of past reliability.

One of the easiest methods for determining reliability is to know that the informant has proven reliable in the past. There should be some indication as to the underlying circumstances of past reliability—such as this informant has furnished correct information three times in the past about wrongful possession of a particular type of drug, naming the drug.

The person furnishing the information to USACIDC and then to the commander may furnish information that is against the person's penal interest—such as he is aware he is admitting an offense, and he has not been promised any benefit. Thus, he may be prosecuted himself. This lends a great degree of reliability to the information furnished.

Obtaining information from other law enforcement officials through normal channels gives a presumption of reliability concerning the information. This factor comes into play when the desk sergeant puts out an all-points bulletin. It is not necessary for the apprehending MP to personally obtain the information from the source. Of course, the original source of the information must satisfy the reliability test. But this determination can be made later and need not be made by the MP who received the all-points bulletin. In other words, reliance on another MP is considered to be reasonable. The same is true for reliance on the report of the victim of a crime. Remember if acting on the basis of an anonymous tip, corroboration of the information may be essential to a finding of probable cause.

Plain View

An MP who is lawfully in any place may, without obtaining a warrant or a commander's authorization, seize any item in plain view or smell which he has probable cause to believe is contraband or evidence of a crime. This is so even if the seizable item is not related in any way to the crime that the MP is investigating. Seeing an item in plain view in proximity to an individual may justify an apprehension or further search of the same area or another area.

An MP may use binoculars, flashlight, or in some cases, a ladder or stool. The same rationale that applies for plain view also applies for plain smell.

DETERMINING ARTICLES SUBJECT TO SEARCH AND SEIZURE

Items can be subject to seizure when specified in a legal search warrant, during a

The commander or MP can lawfully apprehend or search during a lawful, hot pursuit. They also may lawfully apprehend or search while conducting an investigation at a unit or office premises.

Listed are a few of the places where the commander or MP can lawfully apprehend or search.

- Areas of public or private property normally accessible to the public or to the public view.
- Any place with the consent of a person empowered to give such consent.
- Any place pursuant to an authorization to search the particular place.
- Any place where the circumstances dictate an immediate police response to protect life or prevent serious damage to property.
- Any place to effect a lawful apprehension, such as business, home, on the street, or in a vehicle. (In the absence of exigent circumstances, a prior authorization is required to apprehend someone in a private residence.)

While on patrol, an MP may observe an item in a parked car; or while making a routine spot check of a vehicle, the MP may notice something that will aid in a criminal prosecution. The MP may seize that item.

When an MP is lawfully at a place to make an apprehension, he may not examine the entire premises solely to look for evidence. With an apprehension authorization, an MP may go to the on-post quarters to apprehend an individual for an offense. While standing in the foyer of the quarters, the MP may see some item that will aid in a criminal prosecution. He may seize the item that is visible from the foyer. He may not, without invitation, go to the other rooms of the house.

search conducted under a commander's authorization, or during an otherwise lawful

search. All seized items should be clearly marked with the initials of the person making the seizure and the military date and time. While it may be desirable to seize property in the presence of the accused, it is not mandatory; however, a DA Form 4137 must be issued and the chain of custody maintained.

During a lawful search, any evidence relating to crimes other than that specified by the search warrant or search authorization may be seized, provided it is in plain sight during the search or in a place where the specified evidence could reasonably be found.

CONDUCTING ENTRY AND SEARCH TO PROTECT PERSONS OR PROPERTY

A commanding officer or noncommissioned officer may search government property used in connection with assigned duties (such as desks and filing cabinets located in an individual's assigned office or building) to look for contraband or property held in a representative capacity. Any evidence found in the desk may be admissible at a trial.

An MP may make a warrantless entry into any premises whenever he has reason to believe that it is necessary to prevent injury to persons, to prevent serious damage to property, or to render aid to someone in danger.

While on patrol in the housing areas or barracks area, an MP may hear sounds of a fight or cries for help coming from a building. Upon hearing these sounds, he may enter the building to prevent injury or damage. Once the danger or emergency conditions have ceased, he may take only the necessary steps to carry out the purpose of the original entry.

An MP, who is pursuing a person who he has probable cause to believe is armed and has just committed a serious crime, may enter a vehicle or building believed to have been entered by the suspect and may search the multiple dwelling unit or vehicle for the person or any weapons that might be used to further his escape. Once the individual

pursued is apprehended, the search will be limited by the search incident to apprehension rules.

When the person pursued is not found on the premises, the MP may search the premises for evidence of the suspect's identity or the location to which he is fleeing if it is unknown.

The hot pursuit rule will apply when the MP receives a report of an armed robbery or rape and shortly thereafter receives the description of the person who has committed the offense, and pursues the suspect, at which point the suspect enters a quarters on post. He and the other MP may enter the building (for example, quarters or house) and search wherever the suspect may be hiding.

An MP may go to the on post quarters of an individual when the MP has been notified of a domestic disturbance. At the particular house, the officer will try to quell the disturbance, and if the MP views any contraband or any other item which he reasonably believes to be evidence of criminal activity, these items may be seized. Additionally, the disturbance may be such as to give the MP a basis for apprehending one of the individuals at the home. Thereafter, a search incident to the apprehension may be conducted.

CONDUCTING AN IDENTIFICATION SEARCH

An identification search applies to an incapacitated person or to an unsecured or stolen vehicle. An MP may examine the personal

effects of any person who appears to be incapacitated, to learn either the cause of the incapacitation or to identify the individual.

When MP are called to a barracks, they may find an individual unconscious because of an overdose of prescription drugs or a prohibited substance. The MP may gain entry to the room and call for medical help. After the call for medical help, the MP may search the immediate area and the personal effects of the individual to obtain evidence of identity. The MP may also search the immediate area to determine what substance was used to overdose, so medics can treat the illness properly.

An MP on patrol at night may observe a car in a parking lot after the establishment has closed. If someone is observed in the vehicle apparently unconscious, it is proper for the MP to open the vehicle, learn if the individual is unconscious, notify a doctor, and then obtain evidence of the identification either from the individual or from the car itself.

An MP who finds a vehicle unsecured—one that is registered on post or has a visitor's pass and is capable of being secured—will secure the vehicle, leaving a note that the individual who owns the vehicle should secure it himself next time. If the vehicle registered on post cannot be secured, the MP will attempt to learn the identity of the owner by first calling the PM office if time permits and, if not, by searching the vehicle for identification. If the vehicle is not registered on post or does

not have a visitor's pass, the MP may search the vehicle for identification.

If while searching the unsecured car, the owner of the vehicle is identified, the person making the search for identification will attempt to contact the owner and ask him to secure his vehicle in the future. If while looking for identification evidence of a crime is found, the evidence may be seized and may lead to appropriate action against the individual for criminal conduct.

If the owner of the vehicle cannot be determined by looking for identification, the vehicle should be secured temporarily by the MP, and an attempt should be made through all available means to determine the owner or if the vehicle was stolen.

In some states license plate numbers may not be stored in a computer. It may be difficult to determine whether or not a vehicle is stolen unless the identity of the owner can be determined immediately.

When the MP is permitted to make a search for identification, the scope of the search is limited to areas such as glove compartments and consoles where owner and vehicle identification are normally kept. The scope of the search may also include reading documents that are lying in open view inside the car. Once identification has been established, the search is ended.

CONDUCTING AN AUTOMOBILE SEARCH

An apprehending MP may make a warrantless search of the interior of a car at the time and place of apprehension if there is probable cause to apprehend one of the occupants. The scope of the search can be extended to the entire automobile if there is probable cause to believe there is evidence in the trunk or under the hood. The warrantless search need not take place where the apprehension of the occupant took place if there is a valid reason for conducting the search at another place such as at an MP station.

Where there has been a stop of an automobile, the MP stopping the automobile may make a protective search of the passenger compartment of the automobile if the MP possesses reasonable suspicion that the vehicle contains weapons potentially dangerous to the MP. Whether or not reasonable suspicion exists depends on the same factors discussed later for a frisk of an individual. The investigative search extends to those parts of the passenger compartment in which a weapon may be placed or hidden. Just because there is a stop of an automobile

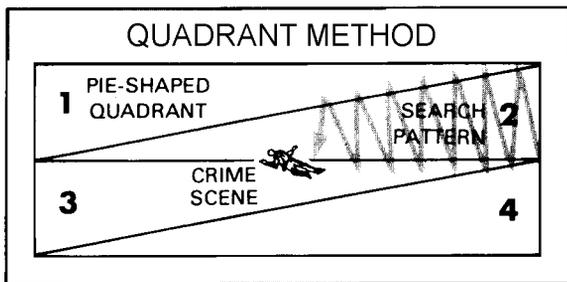
does not mean the MP may conduct an investigative search.

When an individual is stopped for a robbery that has occurred on post and the driver is apprehended on post and taken to the MP station, the car may also be taken to the MP station. If the robbery has recently taken place, there may be probable cause to believe the car contains evidence of the robbery, and it may be searched at the MP station, even though there is no authorization from the commanding officer to search the vehicle.

An individual may be stopped for a traffic offense, and the MP may see items in plain view such as drugs or drug paraphernalia or evidence of other crime. This would give the MP probable cause to believe that other evidence is located in the vehicle. Thus, the vehicle can be searched there or it can be taken to the MP station where a search of the entire vehicle may be made. If the car was not in motion prior to the owner being taken into custody, and there is no likelihood of the vehicle being removed by a third party, a search warrant should be obtained to search the vehicle..

CONDUCTING AN AREA SEARCH

If an offender has left the scene, an adequate number of MP teams should be detailed to participate in an area search. An area search is conducted by using the quadrant method. The area to be searched is divided into four equal pie-shaped wedges radiating outward from the crime scene. One or more units are assigned to each quadrant. The search is begun at the outer perimeter of the quadrant. Units search inward toward the crime scene using a zigzag pattern. It is recommended that units overlap each other's patterns to ensure complete area coverage.



The search for the offender continues until an apprehension is made or the search is abandoned.

In initiating a search, speed is important. Patrol personnel should not wait until a complete description of the offender and/or vehicle is obtained. They should immediately deploy with the information available and start the search. Further

information can be forwarded to units in the field by radio or other means of communications as it is made available.

An area search may be conducted by using a motor vehicle or setting up a fixed post. Or a foot search may be conducted. When conducting a motor vehicle search patrol personnel remain in their vehicles and conduct a rapid area search of fields, parking lots, sidewalks, large throughway alleys, and roads. They are limited in their ability to search because they are conspicuous in a patrol vehicle and thus easily avoided. Also, they are unable to search in detail behind bushes, in doorways, and so forth. Fixed posts are useful at intersections or other vantage points on possible escape routes. These positions can be either single vehicles or formal roadblocks. When conducting a foot search the patrol vehicle is parked, and the search is carried out on foot. Personnel conducting such a search should stop frequently and listen for sounds of the offender. Trees, bushes, and other concealment should be used to protect approaching searchers from being seen by the suspect. Personnel in the area should be questioned. They may have seen the fleeing suspect or strange vehicles in the area. Foot searches can also be initiated to find witnesses and to look for evidence.

CONDUCTING A CONSENT SEARCH

An MP who wishes to make a search that is not otherwise authorized may do so if the person or persons in control of the immediate area or object to be searched voluntarily give their consent. To ensure that the consent is voluntary, the MP should warn the individual of his intent to search. Ideally the individual's consent would be in writing.

"I have no authorization to search. I would like to search you or a particular place."

If the person consents to a search, it will be a voluntary waiver of his Fourth Amendment rights. It must be voluntary and not

mere acquiescence to authority. A refusal to consent to search, like evasive answers to a question, may arouse suspicion, but this evasiveness is not enough to amount to probable cause to search. When you have the subject's consent, you may continue with the search without authorization. A pitfall of consensual search is that it may alert a suspect and permit him time to dispose of evidence or to escape from the installation.

One question a subject may ask is, "What happens if I do not consent to search?" The answer should be that appropriate action will be taken. If the subject persists, tell him you will *apply* for a search authorization. Do not tell him you will *get* one.

CONDUCTING A SEARCH OF ABANDONED PROPERTY

MP lawfully in any place may, without an authorization to search, recover any abandoned property and examine its contents for seizable items. While on patrol MP may observe an abandoned vehicle on an isolated road. It is proper to search the vehicle for any items that may be seized.

While on patrol an MP may apprehend an individual for a traffic offense. Prior to the vehicle coming to a complete halt, with the offender in it, he notices the offender throwing a small envelope from the vehicle. The MP may recover the envelope and seize any objects inside.

CONDUCTING A TRASH AND GARBAGE CONTAINER SEARCH

MP lawfully in any place may, without obtaining authorization to search, examine the contents of a trash or garbage container that is not located next to on-post quarters or

not located in the driveway of the on-post quarters. Thus, the garbage cans located on any street near the curb may be searched without authorization to search.

CONDUCTING A SEARCH OF PREMISES WITHOUT RIGHT TO PRIVACY

MP may, without authorization, search any premises to which a suspect no longer has a right of possession or has demonstrated a lack of intention to return

An individual who has been a resident of the guest house, but who has checked out earlier in the day, has given up the right to

object to a search of his former room. Additionally, when an individual has left the guest house and has not returned for two or three days, and has not provided some intention of returning, that room may be searched. Any items found will be admissible in court.

CONDUCTING A FIRE SEARCH

After a fire in private quarters, the fire marshal and MPI may investigate the cause of the fire so long as the fire fighters are still present performing their duties. Once this investigation is discontinued and the MP and the fire fighters leave the scene, the MP may not return unless an authorization to search the premises without consent has been obtained or it is an emergency. An

emergency is when there is an immediate threat that the fire might rekindle.

When the premises are *completely* destroyed, investigators may return at any time to investigate the cause of the fire. Additionally, when fire officials leave because of darkness and smoke, they may return within a reasonable period to continue their investigation.

MAINTAINING STATUS QUO OR FREEZING THE SITUATION

In some instances, probable cause may not exist without further investigation, or the MP may want to seek advice from a SJA. In such situations, the MP may want to hold a house, room, or automobile in a status quo.

Assume the husband has taken his spouse to the hospital because of a gunshot wound. He implies that he may have been involved

with the crime or that he knows what weapon was used, but he will not tell the MP where it is located. If the husband has been legally apprehended or is consensually at the MP station and there are no children in the family, the MP may want to place notices out on the premises that no one will be allowed to enter without MP permission.

CONDUCTING A BODY CAVITY SEARCH

Under certain situations, a search of body cavities may be permitted. Coordination

with the SJA is recommended before conducting a body cavity search.

SEIZING BODY FLUIDS

An individual may consent to giving a blood or urine sample. Nonconsensual extraction of blood and urine may be made pursuant to a search authorization. Nonconsensual extraction of blood or urine may be made without such an authorization only when there is a probable cause that evidence of crime will be found and when the delay that would result if an authorization were sought could result in the destruction of

the evidence. An order for the individual to give blood or to collect a urine specimen is permissible if done as part of a lawful inspection.

The voluntary and involuntary extraction of blood or urine must be done by a medical specialist, physician's assistant, medical doctor, or other person who is authorized to collect samples.

CONDUCTING A FRISK

An MP may frisk any person whom he has lawfully stopped when the MP reasonably suspects the person is carrying a concealed weapon or dangerous object, and the frisk is necessary to protect the MP or others. The frisk may be conducted immediately upon making the stop or at any time during the

stop—whenever a reasonable suspicion to frisk arises.

A number of factors may be examined in determining whether or not there is reasonable suspicion that the individual is armed and that the frisk is necessary for the protection of the MP or others.

Listed are a few factors that may give grounds for a frisk:

- Appearance.
- Actions.
- Prior knowledge of the individual stopped.
- Location of the stop and whether or not it is a high crime area.

- Time of day.
- Purpose behind the stop.
- Companions of the person stopped.

If, while conducting a frisk, an MP feels an object which he reasonably believes to be a weapon or dangerous item, he may seize this object.

CONDUCTING INVENTORIES

A commander may direct an inventory of an individual soldier's property when the soldier is absent from the unit on ordinary or emergency leave or when hospitalized. If the commander or his designated representative discovers items that would aid in a criminal prosecution, these may be seized and used as evidence. A commander or his designated representative also may conduct an inventory of the property of an individual who has been placed in military or civilian confinement.

When an individual is apprehended for driving while intoxicated or is a subject under apprehension which involves transportation to the PM office, the vehicle of the individual will be secured. When there

is space at the place of apprehension, the vehicle may be secured there; however, if there is no place to secure the vehicle, it will be impounded at the PM office and inventoried.

When a person is apprehended for DWI as he pulls into his quarters parking lot, there is no reason to impound the vehicle. However, if a person is apprehended on one of the outer roads of the post and there is no place to secure the vehicle and there is a possibility that items may be stolen, the vehicle should be impounded at the PM office and inventoried. (AR 700-84 and DA Pam 600-8 contain more information on conducting inventories of personal clothing and property.)

CONDUCTING INSPECTIONS

The commander has the inherent right to inspect the individual barracks in which individual soldiers are housed to ensure the command is properly equipped, functioning properly, and maintaining standards of readiness, sanitation, and cleanliness, and to ensure that personnel are present, fit, and ready for duty.

Such an inspection may include an examination to locate and confiscate unlawful weapons and other contraband if the primary purpose is to determine if the unit is functioning properly, is maintaining standards of readiness, and is fit for duty. This inspection may also include an order for the individual to collect a urine specimen.

A commander conducting an inspection for these reasons may find items he believes

may aid in a criminal prosecution. These items may be seized. The inspector may only look in those areas that will enable him to achieve the purpose and scope of this inspection. When inspecting for food or flammable products, such as lighter fluid, he may look in cigar boxes or other suitable containers.

Normally a commander will conduct periodic security checks to ensure that wall lockers and footlockers are locked. If the commander or his representative conducts a security inspection and notices a wall locker or footlocker unlocked, he may take the valuables from the locker secure them in the unit supply room until the individual returns to the unit. If, while removing the valuables, the person conducting the inspection sees

items that would aid in a criminal prosecution, these may also be seized.

The commander has the right to conduct a search for weapons after a unit has been firing on the range and has returned to the unit area and found a weapon missing. Under these circumstances the commander or his designated representative may conduct a search of all persons who were on the range and others who were in a position to steal the weapon, to include their living area and private automobiles.

Under no circumstances may an inspection or inventory be used as a subterfuge for a search (*United States v. Roberts*,

2 Military Justice Reporter 31 [Court of Military Appeals, 1976]).

If the commander is looking for evidence of a specific crime, or suspects that an individual or group of individuals have drugs in their possession but does not have probable cause for such a belief, he may not use the inspection of the unit as a subterfuge for a search of the individual or group of individuals. Subterfuge normally takes place when a commander or MP "feels" an individual has contraband in his possession' or living area but not enough information to amount to probable cause and uses an inspection of the type previously mentioned in this section to search for the contraband.

CONDUCTING RAIDS

A lawful raid is a surprise, legal invasion of a building or area. A raid may be made to apprehend offenders, to obtain evidence of illegal activity, or to recover personal or US government property. Occasionally this raid is made to prevent the commission of a crime or to confiscate contraband.

A raid must be justified. It must have a clearly stated purpose. The authority to conduct a raid stems from and is justified by having probable cause. Probable cause for a lawful raid comes from information obtained through surveillances, registered/confidential sources, criminal intelligence, or other sources.

Raids are conducted by the agency that has jurisdiction of the case. This agency will have mission responsibility and may be augmented by other agencies based on the reputations of those being raided.

Military authorities authorize and conduct raids in areas under military control. Civil police conduct all raids in areas not under military control. Military authorities can request that civil police conduct a raid if enough justification exists. And MP or USACIDC special agents may accompany civil police as observers. Although forbidden

by the Posse Comitatus Act to participate in a raid, MP or USACIDC special agents may help identify persons or property seized. If military personnel are apprehended in a civil police raid, they may be released to observing MP or USACIDC special agents without formal receipt.

A raid must be coordinated with units and agencies that will be affected by the raid or that can add to the raid's success. Coordination with the SJA helps ensure that the results of a raid can be used in court. In the interest of security, however, coordination is limited to that which is essential. The time of the raid should be selected, if possible, to ensure minimum interference from heavy traffic and allow rapid movement to ensure the presence of subjects and illegal items.

PLANNING A RAID

To be successful raids must be planned. Plans must include not only team composition, equipment, and operational concept, but also any special arrangements that must be made. And alternate plans should be developed. The raiding party can switch to the alternate plan on prearranged signals if the original plan goes awry.

A raid plan should be concise, simple, flexible, and should generally follow the steps used for planning an operations order. It must be based on sound tactical concepts and should be adaptable to any contingency.

A raid is planned in detail with each member of the raiding party briefed on the—

- Objective of the action.
- Number of offenders and their names, descriptions, injuries, and so forth.
- Act the offender is suspected of committing.
- Reputation, background, characteristics, and mental state of the offender.
- Hostages or other bystanders involved and their descriptions.
- Location of the offender (apartment, floor, room number, window, and so forth).
- Offender and if he is armed, and, if so, the type of weapon and amount of ammunition if known.
- Physical layout of the operation (sewers, skylights, adjacent buildings, type construction; for example, wood, brick, and so forth).

- Support forces.

The effectiveness of a raid depends largely upon specific planning and preparation including use of criminal intelligence. Essential to the effectiveness of any raid is the speed and surprise with which it is executed. Although some raids must be staged with a minimum of planning and preparation, the factors of proper coordination, manpower, and equipment to include special weapons must not be overlooked. Essential factors in planning a raid are—

- Mission.
- Opposition expected.
- Items to be searched for or seized.
- Composition of raiding party.
- Orientation of personnel.
- Position and role of each member.

Planning time can be reduced by following an SOP. The SOP contains checklists to help planners. And it gives guidelines for recurring raid factors common to all successful raids. These factors are surprise, speed, simplicity, superiority, and safety.

FACTORS OF A SUCCESSFUL RAID

SURPRISE of time and place	SPEED of action	SIMPLICITY of plan	SUPERIORITY of numbers, weapons, and maneuverability	SAFETY awareness
Essential for success	Essential for surprise	Ensures plan can be understood by participants	Reduces resistance	Reduces danger to raiders
Catches subjects unaware	Ensures raiders can apprehend subjects before they can take counteraction	Ensures instructions can be carried out	Increases likelihood of raid's success	Protects public
Raiding party can move in when least expected				

Surprise keeps subjects from organizing resistance to the raiding party and from destroying or concealing evidence. It keeps them from escaping or helping other subjects escape. And it lessens their chances for suicide attempts if they are so inclined. The subjects of the raid must not know they are targets until the operation begins. The fewer people who know a raid is planned, the greater the likelihood of surprise. Once the raid begins, it must be carried out with speed and precision. The time of the raid must be planned to fit the circumstances. The best time to carry out a raid is when few uninvolved people are about. Raids are often conducted at daybreak. The element of surprise is usually on the side of the raiding party at that time of day.

Speed of execution is vital to the success of a raid. And speed can only be obtained if, from the planning stage onward, all participants have and know their specific assignments. Thus, simplicity of the plan is a key factor for a well-organized raid. Raiding party instructions must be clearly stated. And they must be easy to carry out.

Superiority in manpower and equipment can make the difference between a raid's success or failure. Superiority comes from knowing and exceeding the subject's capabilities. The need for superior manpower or maneuverability dictates the number of members used in the raiding party. And superiority of firepower is desirable in any raid situation. If criminals know the raiding party is better armed than they are, they are less likely to resist. If criminals are armed as well or better than the raiding party, they may believe they have a chance for escape and thus offer greater resistance.

Safety must have a high priority in any MP operation. Danger is inherent in any raid situation. The raiding party must be thorough, cautious, and safety conscious. Speed must not be gained at the expense of safety. Using trained and experienced

personnel reduces the hazard of injury to or death of innocent persons. Every raid member must be able to recognize all members of the raid party. In multiorganizational raids, distinctive clothing, like raid jackets, can clearly identify raiding party members. Each member of the multiorganizational raiding party must be familiar with all aspects of the operation, as well as his or her own mission.

DETERMINING RAIDING PARTY COMPOSITION

The raiding party's composition is determined by the situation and the resources available. There is no set number of people or teams who should make up a party. A suggested organization, which can be modified as needed, is composed of a raid commander; entry, security, prisoner, reserve, and medical teams; and their respective commanders. Sometimes specially detailed persons or teams augment the raiding party. For example, a chemist or a special dog handler team may accompany the basic party.

The raid commander has the overall responsibility for planning and conducting a raid. Raid commanders are selected for their experience and leadership ability and for their knowledge of the situation. Team commanders are responsible to the raid commander for the supervision of their respective teams. They, too, are selected for experience and leadership ability. A reserve team commander is usually named as the assistant raid commander. He assumes command of the raiding party if the commander is injured. A chain of command is established for the raiding party and within each team.

The entry team is the maneuver element. It enters the target area to make apprehensions, as needed, and/or recover property. The entry team may have a recorder, a photographer, and an evidence custodian. The recorder makes notes of events, and property recovered during the raid.

The photographer complements the recorder's notes with photographs of items or events. The evidence custodian assembles, tags, and receipts for the evidence or properties seized.

The security team provides cover for the entry team. It also seals off possible avenues of approach and escape.

The reserve team reinforces or assists wherever needed. Part of this team may stay mobile for use as a pursuit unit. If the reserve team is not needed for its basic purpose, it can augment processing and help control the raid site.

The prisoner team enters the building or area after it is secured. It takes charge of prisoners apprehended by the entry team. The prisoner team must be aware that the entry team does not make a complete search of the prisoners at the time of apprehension.

The medical team should include a doctor if possible. The medical team normally remains with the reserve team. The medical team treats injuries incurred by members of the raiding party or subjects of the raid.

DETERMINING EQUIPMENT REQUIREMENTS

Equipment is selected to suit the raid's purpose and the expected degree of opposition. Special equipment like public address systems, night-vision devices, and drug detector dogs are carefully chosen. Too much equipment can slow the raiding party. Too little equipment can hamper the raid's effectiveness.

The raid commander selects the weapons to be used. He considers the subject's armament, the terrain of the neighborhood, and the degree of resistance expected. He ensures that MP armed with special weapons are proficient in their use.

If riot control munitions are used, they must be planned for. (See FM 19-15 for specific procedures for use of riot control agents.) Clearance to use riot control

munitions must be obtained from the installation commander. The raiding party must have protective masks. And wind direction, traffic, and population density must be considered. Type of munitions must be considered. For example, using burning-type munitions in wood structures can cause fires.

Effective communications are a must for a successful raid. Natural voice, visual, and radio communications give the raid commander control over his various elements. At a minimum, the raid commander and each team leader need a radio. Members of the security team occupying likely avenues of escape also need radios. (Radio equipment must be checked before use. Use of relays may be necessary.)

Hand and arm or whistle signals are often used to direct movements, such as when to begin the raid. Visual and sound signals should be backed by radio communications. The reverse is also true. The local telephone system can be used as well. The important point is to have an alternate means of communication. One method is not enough.

PERFORMING RECONNAISSANCE

If time permits, the raid commander performs a reconnaissance of the building or area to be raided. He may have photographs, maps, blueprints, or sketches collected to supplement visual observations. And he may consider covert operations to gain entrance to help develop his raid plan.

When performing a recon, the MP look for the best route of entry to the target. They check for vantage points and patterns of occupants of the area. And they note points offering observation and fields of fire for the raiding party and/or the occupants.

When reconnoitering a specific building, MP may enter only if doing so will not compromise the raid. MP can obtain blueprints from the facility engineer to gain a thorough knowledge of floor plans and

interior arrangements of a building. MP can note the doors and windows, their construction, and the direction in which they open. They can note likely exits and entrances to include emergency doors and fire escapes. They seek interviews with reliable persons who are responsible for or who have previously entered the area. And they identify persons who may or will be in the building. They spot the location of activities in the area; for example, MP may note the placement of dice and card tables used for gambling. They also assess likely problem areas.

EXECUTING A RAID

No two raids are alike. But many raids are based on similar types of information and follow similar sequences of actions.

Night raids are more hazardous than daylight raids. In many civil jurisdictions a night raid must be justified to a magistrate. The magistrate must be convinced that the purpose of the raid could not be achieved during the daytime, perhaps because the subject would not be at home. This legal restriction is not written into military law. But the principle applies. The law supports the point that a raid should be announced and the raiding party should clearly identify themselves as MP before the party enters.

This identification is difficult at night because visibility is limited. Command and control are also harder at night. And the chance of injury to police personnel, subjects, and innocent bystanders is greater.

Special situations result when females and juveniles are present or are the subjects of a raid. If it is believed females will be apprehended during a raid, arrangements must be made to have them searched and attended by a female MP who is assigned to the raiding party. When juveniles are the subjects of a raid, care must be taken to use minimum force. Plans must be made to process them separately from adult offenders. And they must be maintained separately until they are released to their parents or transferred to juvenile facilities.

If a covert agent is operating within the subject group, he should be advised to be absent at the time the raid will take place. If he cannot be absent, he must be apprehended during the raid or given a plausible means of escape. If apprehended, his later disposition will depend upon the situation, his mission, and his prior identification as a covert agent to the local police. The identity and description, if possible, of the covert agent should be given to all members of the raiding party to prevent any accidental shooting of the covert agent.