

Just an Inspection, or a Search for Evidence? The Difference Matters

By Mathew TullyQ. How do you know whether your commander is conducting an unlawful search under the guise of a legitimate inspection? A. Commanders can't just search anyone in their command whenever or wherever they feel like it. But unlike civilian employers, certain officers have much broader authority to direct subordinates to submit to reasonable searches when certain requirements are met. An officer who suspects a service member of abusing drugs could ask him to voluntarily submit a urine sample. If the service member refuses, the officer could ask a commander to authorize a command-directed urinalysis. The commander would have to demonstrate probable cause, a "reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched," according to the Military Rules of Evidence. Some officers may try to elude this requirement under the guise of calling it an inspection. But the Military Rules of Evidence say "inspections" are intended "to determine and ensure the security, military fitness, or good order and discipline of the unit," not to obtain evidence for use in a disciplinary proceeding. So how do you know if a urinalysis is an unlawful search? It can be hard to tell. What did the official say when requesting the examination? Was it scheduled before a report of misconduct from within the unit? Was it requested immediately after such a report was received? In *U.S. v. Ray Willis* (1997), a Navy steelworker who was found guilty at special court-martial for using cocaine claimed the results of the unitwide urinalysis were an improper search, and appealed the case to the U.S. Navy-Marine Corps Court of Criminal Appeals. An officer-in-charge had requested an examination after receiving a report that someone in the unit - not the steelworker - had been using marijuana. The officer testified that in pursuing the examination, he was concerned mainly with good order and discipline; prosecuting drug abusers was secondary. The commander did not know about the reported drug abuse before authorizing the examination. Convinced that the officer's request was primarily to ensure the fitness and good order and discipline of the unit, the court found the examination qualified as a legitimate inspection. The court noted, however, that had it found the primary purpose was "to identify and discipline drug abusers," it would have ruled the examination as an unlawful search because probable cause was lacking.