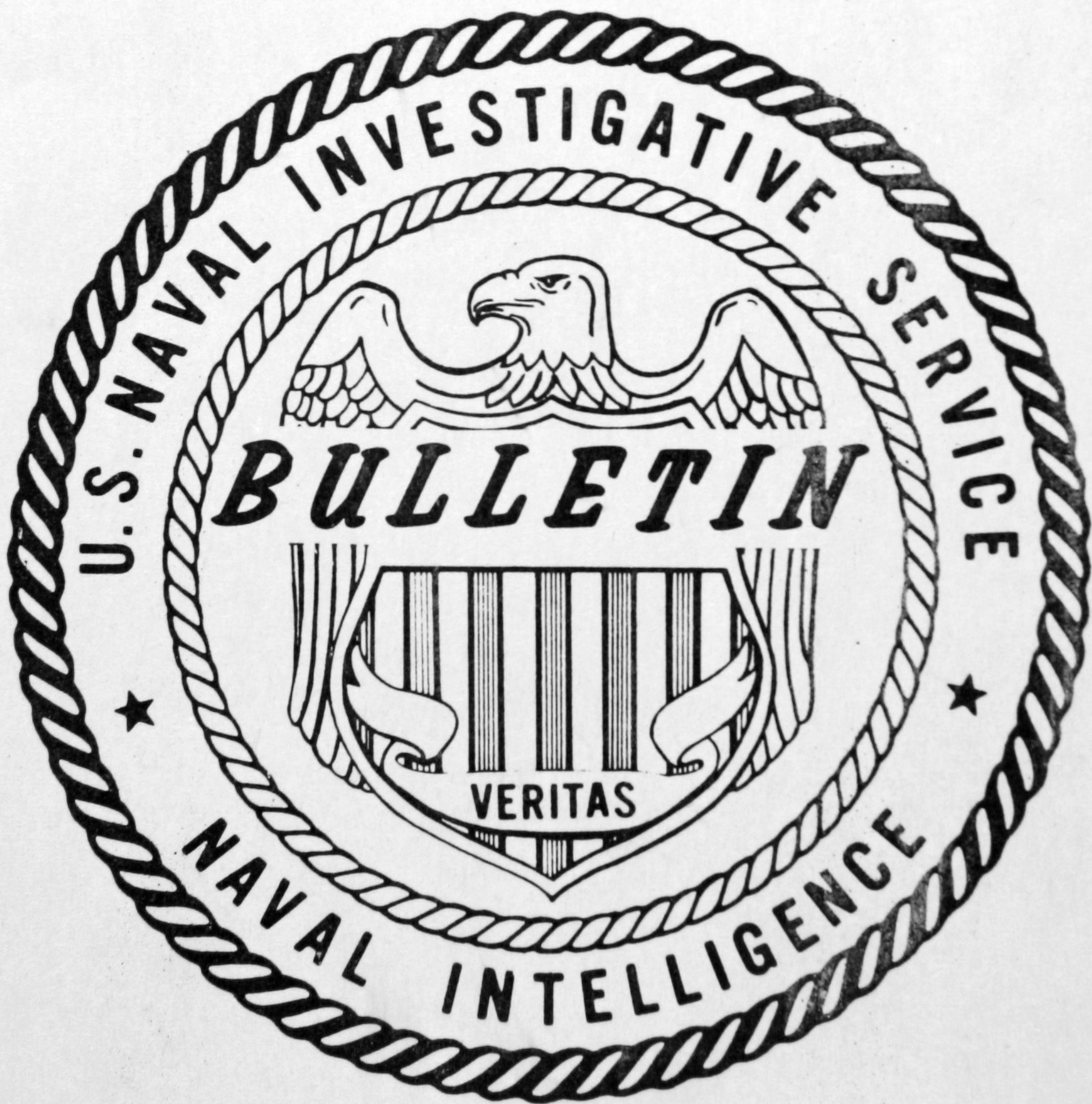


JUNE 1974

N I S



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NIS BULLETIN
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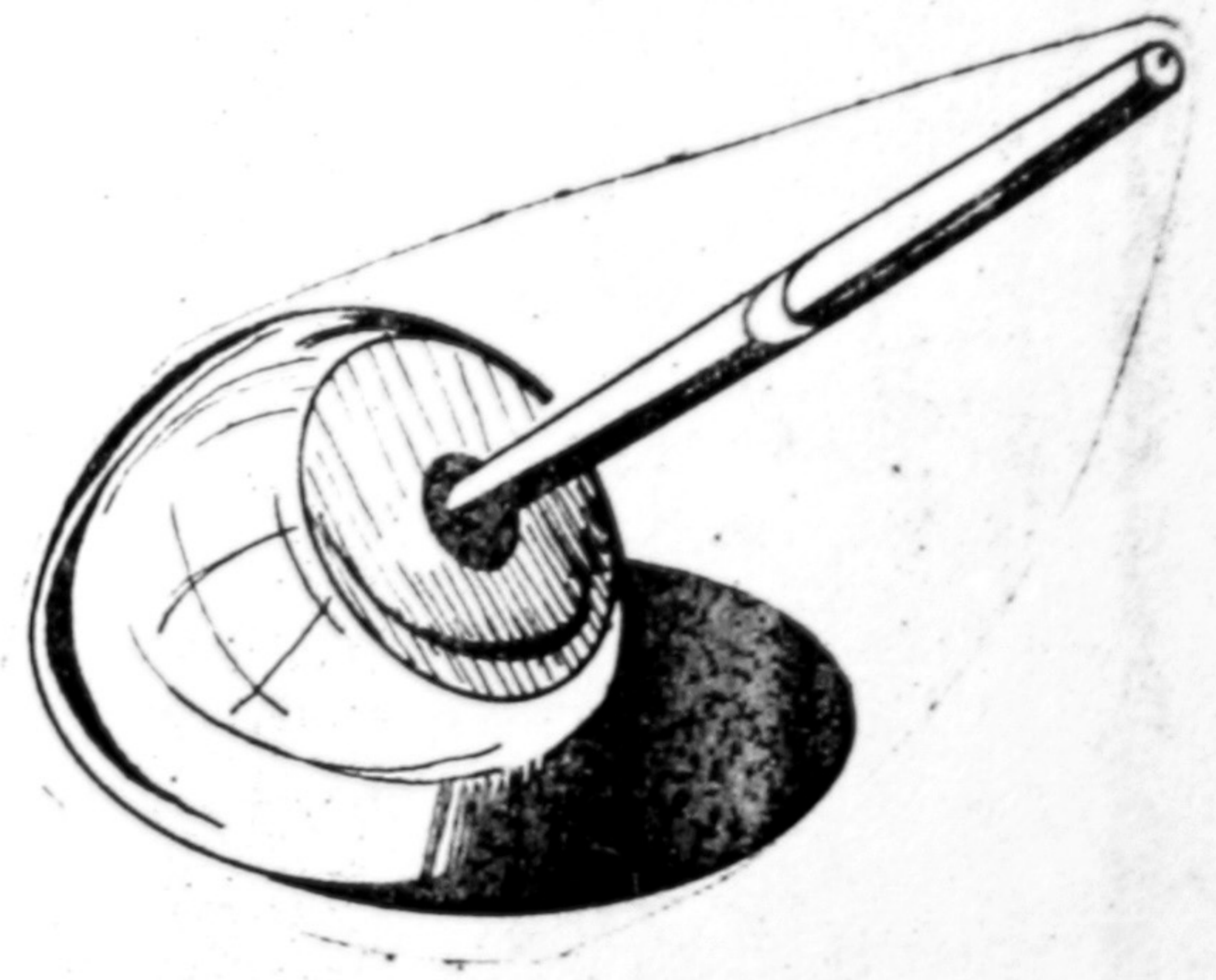
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THE NIS BULLETIN IS PUBLISHED QUARTERLY BY THE NAVAL INVESTIGATIVE SERVICE, 2461 EISENHOWER AVE., ALEXANDRIA, VIRGINIA 22331.

THIS BULLETIN IS INTENDED FOR THE USE AND PROFESSIONAL ENHANCEMENT OF ALL MILITARY AND CIVILIAN SUPERVISORY PERSONNEL, SPECIAL AGENTS AND COUNTERINTELLIGENCE ANALYSTS ASSIGNED TO NIS WORLDWIDE.

FIELD COMPONENTS ARE ENCOURAGED TO SUBMIT ITEMS FOR PUBLICATION ON A CONTINUING BASIS. AN ARTICLE IN THE APRIL 1972 ISSUE OF THE NIS NEWSLETTER DISCUSSES THE DETAILS REGARDING SUBMISSIONS TO THIS BULLETIN.

FROM THE DIRECTORS DESK



With the coming of June, our Headquarters inspection cycle is nearly complete. Since assuming command I have had the opportunity to personally visit or inspect ten of our eleven NISO's, and have traveled some 52,000 miles in the course of visiting 51 NISRA's ashore and three afloat offices. It has been a tremendously rewarding experience. Wherever I went I found high morale, a "can do" spirit and consistent standards of excellence. Commands I talked to were uniformly pleased with the quality of our support and had the highest praise for all of you. This is not to say we are fully up to speed in meeting our mission; there are offices overburdened with caseload, and lacking in both agent and clerical support. In some NISRA's the heritage of our lean years is still evident in terms of equipment and appearance, and all of this must be remedied. Initiatives are underway to correct these deficiencies, and we are actively examining new operational concepts as well, which will see field application in the months to come.

For me, one of the real satisfactions of these visits is that case signatures are no longer autodin accommodations, but identifiable people reporting from the scene of the action. The insights gained have been invaluable, and I am looking forward to continued contact with all of you in our front line locations. Let me also assure you that here in Headquarters we fully intend to follow up in all areas where we can help you do the job more effectively.

FIREARMS SAFETY OR A TRIGGER SHOE CAN BE DANGEROUS

Recently a police officer in an eastern city had equipped his revolver with a trigger shoe. He carried and fired the weapon with the trigger shoe attached for some period of time without incident. Then, one day after firing on the range, he cleaned and reloaded his weapon and started to holster it. While holstering the weapon, the trigger shoe caught on the holster and the weapon discharged injuring the officer. An investigation of the incident revealed that the trigger shoe was the primary cause of the accident. A trigger shoe is a device attached to the trigger which widens the face of the trigger and is designed primarily for single action target shooting. The problem with a trigger shoe, and the cause of the above accident, was the trigger with the trigger shoe attached makes the trigger as wide or almost as wide as the trigger guard. Thus the trigger shoe can catch or drag against the leather of the holster while holstering the revolver and the weapon can be accidentally discharged.

As can be seen by the above incident, the modification of a revolver with the addition of a trigger shoe can be extremely dangerous. Also many of the newer Smith and Wesson .357 magnum revolvers are equipped with a wide target trigger installed at the factory. The factory target trigger is narrow enough to be safe. The installation of a trigger shoe creates an unsafe weapon. Further, the modification of NIS issue weapons is prohibited as reflected in NIS-1 Section 9-0506.1.e, except the installation of custom grips.

USE OF NISHQ QUARTERLY DAMAGE REPORT IN ARSON AND WRONGFUL DESTRUCTION INVESTIGATIONS

A regularly disseminated publication entitled Damage Incidents Affecting the Department of Navy is prepared by NIS-27 on a quarterly basis and consists of a cumulative analysis and review of NIS investigations into incidents of arson and wrongful destruction within the Naval establishment. Three issues of the study, covering the first three quarters of CY 1973 have been published so far and a fourth issue, covering the fourth quarter of 1973, will be disseminated in late May. Previous issues were disseminated only to NISOs and certain senior commands; however in the future, dissemination will also be made to the individual NISRAs. It is believed that this further dissemination will serve to better inform the agent in the field of the nature and scope of the arson/wrongful destruction problem in the Navy and Marine Corps, will provide a data base for command briefings, and even serve as an investigative aid in arson and wrongful destruction cases.

In addition to graphs depicting trends and statistical factors, the study provides a chronological summary of all arson/wrongful destruction cases occurring within the quarter, setting forth the date of the incident, the command involved, the nature and location of the damage, and a brief synopsis of investigative results. The investigative value of the study lies in its ability to provide the investigator with an index of previous acts of arson or wrongful destruction similar to the incident under current investigation. Thus, for example, during an investigation in which the number of suspects is narrowed down to a reasonable few, their previous duty stations can be checked against the study to see if any similar incidents of arson or wrongful destruction might also have occurred there. The publication provides sufficient information regarding the nature of the incident, e.g., aircraft fodding, wire clipping, engine room damage, mattress fires, ejection seat tampering, etc., to give the reader an insight into the modus operandi and thus serve as a sort of "MO file." In the event of a "hit", arrangements could then be made to have the old case file reviewed at NISHQ to determine if there is, in fact, a possible tie-in. While this approach cannot, of course, be used to eliminate suspects, or to serve as a substitute for DCII checks or other logical investigative steps, it does have a significant potential for identifying repeated offenders and its use is encouraged.

The Damage Study is exempt from DIRC filing constraint and may be permanently retained by the NISRA as reference material.

CORROBORATION OF CONFESSIONS

We have all known for a long time that an accused cannot be convicted on his extra-judicial confession alone. However, some of us have wondered as to the sufficiency of corroborating evidence. The following case should answer most of our questions.

U.S.v. SEIGLE, 47 CMR 340 (1973)

SEIGLE, Airman Basic, U.S.A.F., was convicted of larceny of 74 phonograph record albums and a portable phonograph from a Base Exchange. The Court of Military Appeals (COMA) affirmed the action of the Court of Military Review in upholding the conviction.

SEIGLE, after having been properly warned, confessed in writing to the larceny of the record albums and the phonograph, and turned the property over to law enforcement authorities. A friend of SEIGLE's testified that he saw SEIGLE take a record album from the exchange without paying for it. SEIGLE's roommate testified that he saw SEIGLE take record albums, two or three at a time, from the exchange about six times. SEIGLE's former roommate testified that he saw a record player in SEIGLE's room and that SEIGLE told him he had "ripped it off from the BX", and also that SEIGLE had sold him record albums. The Base Exchange assistant manager identified six of the albums by stock numbers and although he could not identify the phonograph, he testified that it was of the same type sold at the Exchange and he identified the box that the phonograph was in, when introduced in evidence, as having an Exchange stock number. An additional witness testified that SEIGLE had told him that he had "ripped off" a stack of record albums.

One of the questions to be decided was whether there was sufficient evidence corroborative of the confession as required by paragraph 140a(5), Manual for Courts-Martial, United States, 1969 (Rev.) This paragraph conditions the admission in evidence of an accused's confession upon the presence of independent evidence "which corroborates the essential facts admitted sufficiently to justify an inference of their truth."

The court, in this case, discusses a change in corroboration requirements after the 1969 revision of the Manual for Courts-Martial. In essence, what the 1969 revision did was to lessen the requirements. Under the 1951 Manual, the requirement was that there be some independent evidence tending to prove each element of a crime as a threshold requirement for the admission of the confession in evidence. U.S. v. SEIGLE holds that some independent evidence tending to prove each element of a crime is NOT required and that it is sufficient if there is independent evidence which corroborates the essential facts admitted sufficiently to justify an inference of their truth.

To sum it up, independent evidence tending to prove each element of the crime is not required. The requirement is that there be independent evidence corroborating the essential facts admitted, ...

NOTE: This decision does not lessen the investigators' ultimate goal of obtaining all the pertinent evidence as to each element of the offense charged.

FACT OF INJURY IN THE PERFORMANCE OF DUTY
(GENERAL) UNDER THE
FEDERAL EMPLOYEES' COMPENSATION ACT

The Federal Employees' Compensation Act (FECA) administered by the Office of Federal Employees' Compensation (OFEC) of the Department of Labor's Employment Standards Administration is a workman's compensation law which provides full medical care and compensation for disability or death for civil officers or employees of the U. S. Government who suffer injuries in the performance of their duties. The test of whether an injury occurs while the employee is in the performance of duty, generally, is whether the injury arose out of or occurred in the course of employment.

The term "in the course of employment" means that the injury occurred during the period of employment. "Arising out of the employment" means that there is some causal relationship between the work experience and the injury. There are situations where an injury occurs in the course of employment but does not arise out of the employment. An example of this is an employee who has some personal difficulty with a neighbor. The neighbor appears at the worksite and injures the employee. Although the injury occurred in the course of employment, it arose out of some personal difficulty - not the employment - and it would not be compensable.

The questions of negligence and fault are immaterial in determining an employee's entitlement to benefits - rather the primary issue is whether the injury occurred in the course of employment and whether there is some relationship between the work and the injury. Neither negligence nor fault on the part of the employee restricts his rights to benefits nor does fault on the part of the employer in any way increase the liability for benefits under the Compensation Act. The right to, and amount of, benefits are based largely on a social theory of providing support and preventing destitution, rather than setting accounts between two individuals according to their personal guilt or blame.

There are, however, three circumstances under which the FECA specifically bars payment of benefits. These circumstances are where the injury or death is

- (1) caused by willful misconduct of the employee;
- (2) caused by the employee's intention to bring about injury or death of himself or another; or
- (3) proximately caused by intoxication of the injured employee.

The first exclusion, when an injury is caused by the willful misconduct of an employee, is generally limited to the deliberate and intentional violation of known regulations designed and enforced to preserve the employee from serious bodily harm. Misconduct, the result of carelessness, inadvertence, thoughtlessness, inattention, distraction, and negligence do not come within the meaning of the term "willful misconduct." For an injury to be excluded under this provision of the law, the facts must show that there was not only misconduct on the part of the employee but that this misconduct was deliberate with the knowledge that it was likely to result in serious injury and with a reckless disregard for its probable consequences. It must be shown not only that there was willful misconduct, but also that this willful misconduct caused the injury, if it is to bar payment of compensation.

Following are two examples where the question of willful misconduct is considered:

(1) A linesman is severely burned by a "live" wire upon which he was working without gloves. The company rule requiring employees to wear rubber gloves at all times was not enforced by the employer, leaving the decision of taking this safety precaution largely up to the employee. Since this injury was not due to the willful misconduct of the employee, he was entitled to benefits of the Act. A rule not enforced by the employer can lead to a false sense of security on the part of an employee and to negligence and carelessness in performing his work.

(2) Another experienced linesman was electrocuted when he cut a "live" wire using uninsulated cutters with his bare hands. There was a strict rule forbidding this which the employer consistently and repeatedly enforced. The employee was provided with rubber gloves. Two days before his death he was observed working without gloves and the employer insisted that he put them on. An hour and one-half before his death his superior again insisted that he put on the protective gloves. The employee knew the hazard involved in handling "hot wires," but he intentionally disobeyed repeated, direct orders.

It was found that this injury was due to the willful misconduct of the employee. His violation of the safety rule was deliberate and reckless in view of constant reminders of his employer and his knowledge of the possible consequences of his misconduct.

The second exclusion is when injury is caused by the employee's intention to bring about injury or death of himself or of another. Suicide, or intent to commit suicide would fall in this category. Generally speaking, suicide is not compensable because it is caused by the employee's intention to bring about his own death. An exception to this rule occurs where a work-connected injury has led to mental derangement and the emotional condition is of such severity as to cause the employee to take his own life through an uncontrollable impulse and without conscious volition to produce death.

The third bar to benefits occurs where injury is proximately caused by intoxication of the injured employee. However, to completely eliminate the employee's entitlement in this circumstance, the facts must show not only that the employee was intoxicated at the time of his injury, but also that his intoxication was the proximate cause of the injury. An example is an employee who was working at a remote worksite in the North. Because of the remoteness of the worksite he was provided quarters by his employer and was considered in the performance of duty during any reasonable use of his quarters. He slipped and fell at the entrance to his quarters one evening, breaking his leg. Witnesses reported he was intoxicated at the time and this was confirmed by the fact that the doctors were able to set his leg without the need for anesthesia. However, snow and ice covered the ground at the time, making walking hazardous. Anyone could have slipped and fallen under these circumstances and although this employee was intoxicated at the time of his injury, it was not established that his intoxication was the proximate cause of his injury.

Having considered the three statutory exclusions to the compensability of injuries sustained in the performance of duty, let us turn to other situations where the question of an injury in the performance of duty must be considered.

This question is often a problem in the case of employees who travel in performance of their duties. An employee whose work entails travel away from the employer's premises is within the course of his employment continuously during the trip, except when he makes a distinct departure from his employer's business on a personal errand. Thus, injuries arising out of the necessity of sleeping in hotels, eating in restaurants and other reasonable activities, which are incident to the status of travel, are usually considered as having occurred while in the performance of duty.

Here are two examples of cases of injury sustained by employees while in travel status:

- (1) An employee whose permanent job site was Washington, D. C. was sent to Chicago, Illinois, on a temporary assignment for one week. He was issued orders to travel and was paid a travel allowance during the period of his assignment. After being in Chicago for two days he was injured in a fire in the hotel where he was staying. This injury occurred while in the performance of duty. His use of the hotel was a reasonable activity incident to his travel status.
- (2) This same employee had relatives living approximately fifty miles from Chicago. Let's assume that, instead of being injured in a hotel fire, he decided to visit these relatives one evening. He was then injured in an automobile accident approximately ten miles from his relatives' home. This injury did not happen while he was in the performance of duty. It occurred while he was making a trip for personal reasons. He had made a distinct departure from his employer's business. It, therefore, did not occur in the performance of duty.

Where the injury results from recreational activities, the issue of "performance of duty" presents additional problems. If the employee is a "Recreation Director" and he is injured while participating in or directing recreational activities in connection with this job, he would, of course, be in the performance of his duties at the time of his injury. However, where an employee is participating in recreational activities that have some association with but are not actually a part of his job, he may not be entitled to benefits of compensation law.

Generally speaking, there are two kinds of recreational activity. There is the formal type, where the employer sponsors, provides equipment, and schedules games in which the participants and spectators are indulging in recreation. These games are usually scheduled during off-duty hours and not on the employer's premises. An injury sustained by an employee while participating in such a recreational activity generally is considered to have occurred while in the performance of duty only if there is some advantage or benefit derived by the U.S. Government from the employee's participation.

The other type of recreation is the casual, or informal, type where a few employees for example will play a game of handball. This type of activity occurs on the premises of the employer and usually during lunch hours or break periods. The question here is whether the activity is an accepted and normal one at the employing establishment. Usually, if such activities are accepted by the employer, they become a regular incident or condition of employment. An injury occurring while participating in such an activity will be accepted as having occurred while the employee was in the performance of duty. It is important to note that an employee injured under any circumstances involving his employment should immediately report the injury to his supervisor on Form CA-1&2. The official designated by the Commanding Officer at each Navy activity is required to forward this form to the OFEC for determination of entitlement of benefits under the FECA. ~~Only the OFEC has authority to approve or reject a claim filed under the FECA.~~ Such determinations are not to be made by the employing agency or any other person or party.

TRANSFERS

	<u>FROM</u>	<u>TO</u>
BURKHAMER, J. R.	NISRA KEFLAVIK	NISSU Beeville
BOURKE, M. G.	NISRA Yokosuka	NISRA Port Hueneme
DAVIES, J. G.	NISRA Port Hueneme	NISRA Yokosuka
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SUMNER, W. K.	NISRA Miramar	NISRA Okinawa
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ARNOLD, L. M.	NISRA Pensacola	NISRA Gulfport
GUTHRIE, D. G.	NISRA Gulfport	NISRA Orlando
MUSANTE, P. N.	NISRA Orlando	NISSU LaMaddalena
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PLANTON, D. N.	NISHQ	NISO Philippines
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GASSAWAY, A. D.	NISO San Diego	NISO Europe
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NISHQ
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NISRA Pearl Harbor
NISRA New York

NISSU Brunswick
NISRA Fallon
NISRA Norfolk
NISSU Whiting Field
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NISRA Washington
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NISRA Bremerton
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NISRA Subic Bay
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NISRA Norfolk
NISRA Miramar
NISRA Parris Island
NISRA Camp Lejeune
NISHQ
NISRA Orlando
NISRA Jacksonville
NISRA NTC San Diego
NISSU 29 Palms
NISRA Rota
NISO San Francisco
NISPAC
NISRA Subic Bay
NISRA Athens
NISRA Yokosuka
NISRA Newport
NISRA Okinawa
NISHQ
NISRA Camp Pendleton
NISRA Washington
NISRA Okinawa
NISRA Subic Bay
NISSU 29 Palms
NISSU Kingsville
NISRA New York
NISRA Guam
NISRA Pearl Harbor

PROMOTIONS TO GS-15

BLISS, M. S.	Supervising Agent, NISPAC
DONNELLY, J. F.	Head, Internal Security Div., NISHQ
KERR, D. J.	Head, Criminal Division, NISHQ
NOLAN, T. J.	Supervising Agent, NISO San Diego
RUESCH, R. E.	Supervising Agent, USNISO Europe
VOLLRATH, R. L.	Supervising Agent, NISO Norfolk

PROMOTIONS TO GS-14

DUFFY, G.L.	Supervising Agent, USNISO Japan
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IPSEN, P. N.	Head, Research and Production Div., NISHQ
OULAHAN, J. C.	Asst., Supervising Agt, Criminal Matters NISO Norfolk

PROMOTIONS TO GS-13

BRADY, B.L.	SRA, Special Projects, Subic Bay
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LACOSTA, R.	SRA, NISRA Parris Island
LANNOM, C. R.	SRA, NISRA Orlando
MORSE, G. L.	SRA, NISRA Keflavik
RENDE, R.K.G.	SRA, NISRA BREMERTON
POWERS, R. J.	SRA, NISRA Washington
SLEEPER, A.L.	SRA, NISRA Boston

PROMOTIONS TO GS-12

DYKES, D.W.	SRA, NISSU FALLON
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THOMPSON, J. W.	Rep Resident Agent, NISSU Kansas City
ANDERSEN, P. J.	Senior Agent, NISRA Camp Lejeune
ANDERSON, Peter L.	Senior Agent, NISRA Camp Pendleton
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BURKHAMER, J. R.	Rep Resident Agent, NISSU Beeville
CUSACK, J. G.	Senior Agent, NISRA Subic Bay
HAMILTON, D. D.	Senior Agent, NISRA Okinawa
HERR, R.K.	ASRA, NISRA Roosevelt Rds.
JONES, M. B.	ASRA, NISRA Taipei
MCFADDEN E. J.	ASRA, NISRA Quantico
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SCANLAN, J. N.	ASRA, NISRA London
SKIFF, C. L.	ASRA, NISRA Corpus Christi
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STOVALL, H.S.	Senior Agent, NISRA Guam
HANCOCK, L. A.	Rep Resident Agent, NISSU Corry Field
DAVIES, J. G.	Senior Agent, NISRA Yokosuka
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WOROCHOCK, William A.	ASRA, NISRA New York

NEW HIRES

HARMELING, ROBERT K.
SCHULTE, Rupert B.
TOMASO, Douglas A.
TALLEUR, Thomas J.
DIXON, Timothy J.
LANDIN, Joseph C.
SHULER, Wyman E.
MANLOVE, RONALD L.
MUGGLEWORTH, Charles D.
DAVIS, Robert W.
ALLEN, Richard R.
CONSOLI, John A.
KELLER, Albert C.
STRYKER, William J.

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NISRA Great Lakes
NISRA Camp Lejeune
NISRA Charleston
NISRA Memphis
NISRA Quantico
NISRA Alameda
NISRA El Toro
NISRA North Island
NISRA Long Beach
NISRA Philadelphia