

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, DC 20350-1000

SECNAVINST 5520.3A
OP-09N
17 August 1990

SECNAV INSTRUCTION 5520.3A

From: Secretary of the Navy
To: All Ships and Stations

Subj: CRIMINAL AND SECURITY
INVESTIGATIONS AND RELATED
ACTIVITIES WITHIN THE
DEPARTMENT OF THE NAVY

Ref: (a) Executive Order 12333
(b) DOD Instruction 5505.3
of 11 Jul 86 (NOTAL)
(c) SECNAVINST 3820.2D
(d) SECNAVINST 3850.2A
(e) JAGINST 5800.7B
(f) DOD Directive 5525.7
of 22 Jan 85 (NOTAL)
(g) DOD Instruction 5505.2
of 20 Jun 85 (NOTAL)
(h) SECNAVINST 5430.92A
(i) OPNAVINST 5510.1H
(j) OPNAVINST C8126.1 (NOTAL)

1. **Purpose.** To restate jurisdiction and responsibilities in the conduct of criminal and security investigations and related activities within the Department of the Navy.

2. **Cancellation.** SECNAVINST 5520.3.

3. **Discussion.** Good order and discipline are the direct responsibility of command. In the discharge of this responsibility, commanding officers must frequently rely on prompt investigative action by professionally trained personnel, not only for effective resolution of alleged, suspected, or actual criminal and security offenses, but also to preserve facts and construct an evidentiary foundation for subsequent command action. Under the Secretary of the Navy, the Naval Investigative Service Command (NISCOM) has primary investigative and counterintelligence jurisdiction within the Department of the Navy. This jurisdiction is grounded and documented in Presidential Executive Order, Department of Defense instructions and Secretary of the Navy

instructions, (references (a)-(d)). The Marine Corps maintains a cadre of accredited counterintelligence and investigative personnel who exercise jurisdiction as delimited in this instruction and implemented by Marine Corps directives. NISCOM maintains a worldwide field structure which provides criminal investigative and counterintelligence support to the Navy and Marine Corps both ashore and afloat. In a combat or combat contingency environment, the task force commander afloat and landing force commander ashore exercise immediate control over assigned Navy and Marine investigative and counterintelligence assets. Commands maintain a limited investigative capability for resolving minor offenses and those of a purely military character. This instruction delineates NISCOM's responsibilities and limitations regarding utilization of assets and policy applicable to criminal and security investigations, criminal intelligence operations, counterintelligence activities and technical investigative support matters.

4. **Command Relationships.** NISCOM is an (A) Echelon Two Command under the supervision of the Chief of Naval Operations with reporting responsibility to the Secretary of the Navy. Additionally, NISCOM reports to the Chief of Naval Operations for physical, personnel and information security as special Assistant for Naval Investigative Matters and Security (OP-09N) and, through the Director of Naval Intelligence, to develop policy for the Navy on foreign counterintelligence as Assistant for Foreign Counterintelligence (OP-92X).

5. **Responsibilities**

a. **Major Criminal Offenses**

(1) Within the Department of the Navy, NISCOM is solely responsible for investigating actual, suspected or alleged major criminal offenses committed against a person, the United States Government or its property, or private property, including the attempts or conspiracies to commit such offenses. A major criminal offense (felony) is defined for purposes of this

0579L00551770



instruction as one punishable under the Uniform Code of Military Justice by confinement for a term of more than one year, or similarly framed federal statutes, state, local or foreign laws or regulations. Incidents of actual, suspected or alleged major criminal offenses coming to command attention must be immediately referred to NISCOM whether occurring on or off an installation or ship and regardless of whether

- R) they are being investigated by state, local or other authorities. The referral to NISCOM should be made before any substantive investigative steps are considered by the command, such as interrogation of suspect(s) or conducting searches of property, as to which individuals have an expectation to privacy, unless such steps are necessary to protect life or property or to prevent the destruction of evidence. Command investigations conducted pursuant to the Manual of the Judge Advocate General (reference (e)) must not compromise or otherwise impede the NISCOM investigation. When NISCOM is conducting an investigation and the officer in command deems it necessary to proceed with an inquiry pursuant to reference (e), that decision must first be communicated to the local NISCOM office to establish coordination of the investigative effort. If NISCOM objects to the initiation of the inquiry by a command fact-finding body, the command inquiry will be suspended and the matter referred for resolution to the officer exercising general court-martial jurisdiction, or the area coordinator via the chain of command. NISCOM shall comply with the referral, reporting, and conferral requirements of the Memorandum of Understanding (MOU) between the Department of Justice and the Department of Defense relating to the investigation and presentation of certain crimes, as implemented by reference (f).

- (2) In those rare instances when immediate response by NISCOM is not feasible, such as a submarine on patrol or a ship at a remote location, commanding officers shall conduct such preliminary investigations as circumstances dictate, preparatory to a later full investigation by NISCOM. NISCOM shall immediately be notified (where security

considerations do not dictate otherwise) to facilitate NISCOM guidance to commands. Appropriate measures shall be taken to ensure the preservation and accounting of possible evidence and to avoid any action which might prejudice investigative possibilities or otherwise impair the subsequent judicial process. NISCOM may decline to undertake investigation of certain cases but must comply with fraud investigation and reporting requirements of references (g) and (h). When this occurs, the requesting command will be expeditiously notified. Examples of situations which may be deferred by NISCOM to the command for resolution include the following:

(a) When in NISCOM judgement, the inquiry would be fruitless and unproductive.

(b) Any instance in which the suspected felonious offense is purely military in nature such as unauthorized absence.

(c) When, in accordance with policy promulgated by the Commander, NISCOM, certain lesser offenses may be deferred to the command for investigation because of NISCOM priorities or resource limitations. (R)

(3) In addition to referral of major criminal offenses, when any of the following circumstances occur, the command shall promptly provide available information to NISCOM for investigation:

(a) Any death occurring on a Navy vessel or Navy/Marine Corps aircraft or installation, except when the cause of death is medically attributable to disease or natural causes. When notified, NISCOM will investigate the circumstances until criminal causality can be reasonably excluded.

(b) Any fire or explosion of unknown origin affecting Department of the Navy property or property under Navy or Marine Corps control.

(c) Aspects surrounding a nominal or minor incident of a potentially sensitive nature. Such considerations include, but are not limited to, incidents involving loss of ordnance, narcotics, dangerous drugs or controlled substances; incidents of aberrant sexual behavior involving force/coercion or when children are involved or where special circumstances are present and command authority desires the help of NISCOM resources for resolution of such matters; or damage to government property which appears to be the result of terrorism, arson or other deliberate act.

R) (d) Thefts of minor amounts of personal property when ordnance, contraband or controlled substances are involved. On Marine Corps installations, guidance is provided by MOU between NISCOM and Commandant of the Marine Corps.

(e) Disappearance of a command member which may suggest foul play.

(f) All information concerning possible significant cases as discussed and required by references (g) and (h).

(4) A major criminal offense, as defined, may constitute a violation of both military and civil law, and may involve both military personnel and civilians. Primary or concurrent jurisdiction may also rest with another agency outside the Department of the Navy. Only NISCOM has the authority to make investigative referrals in these instances. When Department of the Navy commands or personnel are contacted by other law enforcement organizations in connection with investigative matters, the matter must be referred to NISCOM for coordination. This policy includes inquiries by federal, state, local and foreign law enforcement or investigative agencies when the matter involves security or major criminal offenses, as previously defined.

R) (5) When NISCOM personnel are embarked aboard any naval vessel, commands shall provide appropriate logistical and

communications support within the limits of other operational commitments.

b. **Minor Criminal Offenses.** A minor criminal offense is defined as one punishable under the Uniform Code of Military Justice by confinement of one year or less, or carrying similar punishment by federal, state, local or foreign statute or regulation, and lacking any of the considerations enumerated in the discussion of major criminal offenses above.

c. Use of Command Investigators

(1) Many Navy and Marine Corps commands maintain an investigative capability. Use of command investigators for criminal and security investigations shall be limited to minor offenses, as defined in this instruction, except when NISCOM has declined jurisdiction. The Commander, NISCOM, or his designee, may from time to time enter into agreements with the Marine Corps or Navy commands regarding command-conducted investigations which meet the definition of major criminal offenses, as defined in this instruction. However, such agreements shall never prevent NISCOM from conducting any investigation it deems appropriate and in the best interests of the Department of the Navy. This stipulation does not preclude command investigations in those instances where NISCOM is not investigating or where the offense is purely military (e.g., unauthorized absence). (R)

(2) Off-base investigative activities by command investigators shall be limited to minor offenses and to the immediate area surrounding the installation and off-base housing areas. This policy shall not in any way restrict their assigned patrol and law enforcement functions such as preventing the escape or loss of identity of suspected offenders, preserving crime scenes and ensuring the integrity of physical evidence.

d. **Criminal Intelligence Operations.** Criminal intelligence operations are defined as formalized programs targeting persons or organizations whose criminal activity significantly affects (D)

the Naval establishment, or those activities designed to gain information of a criminal intelligence nature for law enforcement purposes. A high degree of specialized training and experience is necessary for the successful accomplishment of these operations, and, to the extent that they are undertaken within the Department of the Navy, they will be done exclusively by NISCOM, regardless of location. Criminal intelligence operations are undertaken at NISCOM initiative, in close coordination with senior command authority. During their course, these sensitive operations may disperse over wide geographic areas and extend across multiple command lines. The cooperation of all commanding officers is necessary to insure the integrity of these operations and enhance the probability of success.

- A) **e. Fraud Matters.** References (f) and (g) established policies, procedures and responsibilities for determining which Department of Justice or Department of Defense criminal investigative agency will conduct investigations of fraud offenses under the United States Code and the Uniform Code of Military Justice. Reference (h) implements these policies, procedures and responsibilities for the Department of the Navy. To that end, all instances of suspected fraudulent activity within the Navy or Marine Corps will be immediately referred to NISCOM, whether committed by a military member, a civilian, or a business enterprise. The general term "fraud" includes theft or embezzlement from the government, bribery, receipt or giving of gratuities, conflict of interest, violation of anti-trust laws, as well as false statements and false claims in the following areas: pay and allowances, procurement, property disposal, subsistence, unauthorized services, non-appropriated funds, foreign military sales and personnel matters. NISCOM maintains primary jurisdiction in the investigation of these offenses as they relate to the Department of the Navy, even though NISCOM may work jointly with other Department of Justice, Department of Defense, federal or local law enforcement agencies during the term of the investigation. Ultimately, NISCOM will refer all viable fraud cases to the

appropriate command or U.S. Attorney's office for criminal prosecution, civil litigation or administrative remedies.

f. Security and Counterintelligence Matters

(1) Within the Department of the Navy, (R) NISCOM has exclusive investigative jurisdiction in non-combat matters involving actual, potential, or suspected terrorism, sabotage, espionage, and subversive activities. This jurisdiction includes actual, suspected, or attempted defection by Department of the Navy personnel. Prompt command referral of matters in these categories to NISCOM is mandatory.

(2) In accordance with reference (i), (R) coordination between commands and NISCOM in security matters will be as follows:

(a) When classified information has been, or is suspected of being lost, compromised, or subjected to compromise, NISCOM will be notified immediately. The command will conduct a preliminary inquiry, unless otherwise directed by NISCOM. NISCOM will promptly notify the commander whether investigative action will be taken. Regardless of whether NISCOM has declined investigative action, the (R) command may request investigative assistance for the command's investigation. A NISCOM investigation does not exempt the command from the responsibility to conduct an investigation in accordance with reference (e), if required in accordance with reference (i).

(b) NISCOM will be notified immediately of any requests through other than official channels, for classified national defense information from anyone or for unclassified information from an individual believed to be in contact with a foreign intelligence service. NISCOM will then advise what action is to be taken.

(c) When a member with access to classified information commits or attempts to commit suicide, the command will forward

available information to NISCOM for action. If NISCOM assumes investigative jurisdiction, the command investigation will be subordinate.

(d) When a member who had access to classified information is an unauthorized absentee, the command will investigate to determine if there are indications that the absence may be inimical to national security interests. If there are such indications, NISCOM will be notified immediately.

(3) Reference (c) delegates to NISCOM the primary responsibility for collecting, processing, storing and disseminating counterintelligence information regarding persons or organizations not affiliated with Department of Defense. Therefore, all information regarding these activities obtained by the command will be forwarded to NISCOM.

(4) Reference (d) designates NISCOM as the primary element within Department of the Navy for the conduct of non-combat related counterintelligence and related activities. These important operations are undertaken at NISCOM initiative and will be done exclusively by NISCOM within the Department of the Navy. Utilization of Navy and Marine Corps personnel (military or civilian) and property, including classified information and material, is often critical to the success of counterespionage operations designed to thwart the threat posed by certain foreign entities. In that regard, the fullest cooperation of all commanding officers is necessary and directed.

(5) Commands which support, develop or execute sensitive Navy/Marine Corps programs of inherent value to hostile intelligence will, with NISCOM assistance, establish passive programs to enhance operational and information security.

g. Special Activities. In addition to the above-noted categories, NISCOM facilities may be utilized by the Department of the Navy where unusual circumstances or aspects of sensitivity pertain (such as the protection of senior officials, dignitaries or other persons) and which may require unusual techniques and/or exercising a

high degree of discretion or employing extensive investigative resources.

h. Liaison. In the field, NISCOM shall be the element exclusively assigned to maintain liaison on all criminal investigative, and counterintelligence and security matters with federal law enforcement, security and intelligence agencies; and shall be the primary agency for liaison in these matters with state, local, and foreign law enforcement, security and intelligence agencies, including those of foreign and U.S. military departments. This does not limit contact between appropriate Navy or Marine Corps judge advocates and federal or state agency officials to determine prosecutorial jurisdiction, forward grants of immunity, coordinate pretrial agreements, or take any other prosecution-directed action consistent with reference (f).

i. Initiation and Reporting. To promote (R) effective law enforcement and per reference (b), the following policy is established:

(1) Requests for NISCOM support may be initiated by any commander, commanding officer or other appropriate command authority in the Navy or Marine Corps.

(2) Per reference (b), NISCOM is (R) authorized, exclusive of command request, to undertake investigative activities within the purview of this instruction and need not solicit authorization or requests to conduct any investigation; however, NISCOM shall normally assure that the Immediate Senior In Command (ISIC) of the person or organization being investigated is promptly apprised of the initiation of the investigation.

(3) Should the responsible ISIC not concur with the initiation of an investigation because of operational or other considerations, such officer will report the circumstances immediately to SECNAV via the chain of command and the Chief of Naval Operations (CNO) or the Commandant of the Marine Corps (CMC), as appropriate. The Secretary of the (R) Navy will make a determination upon

receiving the recommendations of COMNISCOM and the CNO or CMC and will provide the Department of Defense Inspector General (DoDIG) with the details of the case and the resolution of the matter. No investigation may be delayed or suspended in these circumstances except by expressed direction of the Secretary of the Navy.

- R) (4) Only the DoDIG may request the Commander, NISCOM to delay, suspend or terminate an investigation being conducted at the request of the DoDIG. All requests to delay, suspend, or discontinue such investigations will be promptly referred to SECNAV. .

(5) Under normal circumstances,

- D) commanders and commanding officers shall not
A) impede the use of investigative techniques permissible under law or regulation which NISCOM considers necessary. Examples include undercover criminal operations, to include drug operations and investigations. Commands are encouraged to support recruitment and utilization of naval personnel as cooperating witnesses and confidential sources of information. Command approval for NISCOM utilization of Department of the Navy civilian employees is not necessary; however, due to the unique nature of the military chain of command, prior to NISCOM tasking any military member, initial concurrence of the commander or commanding officer to utilize the member will be obtained.

(6) Commanders and commanding

- D) officers are responsible for ensuring NISCOM investigations are not compromised by command
A) personnel. Providing information about ongoing NISCOM investigations to persons below the executive officer level should be held to an absolute minimum and is discouraged except under unusual circumstances.

(7) To permit Department of the Navy

- D) reporting to the DoDIG, commanders and
A) commanding officers must ensure that any member under their command who is investigated by NISCOM, and who is thereby the subject of a court-martial or nonjudicial punishment proceeding, submit to fingerprinting by

NISCOM. Commands must also forward to NISCOM a copy of the court-martial or nonjudicial punishment disposition within 30 days of disposition. Dispositions which are exculpatory in nature (e.g. dismissal of charges or acquittal) must also be forwarded. For purposes of this instruction, disposition does not include appellate action. For court-martial, disposition means either dismissal of preferred charges by convening authority or, if charges are referred, court-martial findings and sentence, if any. For nonjudicial punishment cases, disposition means the commander's (or commanding officer's) decision to dismiss charges or the imposition of punishment and the specifics thereof.

(8) NISCOM is authorized to support, on a reciprocal basis, other federal, state, local or foreign law enforcement, security or intelligence agencies in lawful actions. Such support shall include, but not be limited to, providing information/intelligence and reports of investigation concerning military and civilian personnel who are suspected of committing criminal offenses in the respective jurisdictions of other agencies. (A

(9) NISCOM shall ensure that each command or other prosecutorial authority is provided a full report of offenses occurring within the jurisdiction of that entity. In addition, it is the responsibility of NISCOM to:

(a) Assure the maintenance of a central repository for appropriate reports of investigation and pertinent counterintelligence data.

(b) Provide statistical reporting required by higher authority on investigative and other matters within its mission responsibility.

(c) Report any aspect of investigative, security or counterintelligence activity indicating an actual or potential trend, a threat to operational integrity, or an occurrence which otherwise warrants the attention of fleet and force Commanders in Chief, Department of

Defense/Department of the Navy, Commanding Generals, FMFLANT and FMFPAC, and senior authority at the seat of government. This in no way abrogates the responsibility of commands to notify appropriate echelons of significant incidents, investigative action initiated, results thereof, and command actions taken or contemplated. This responsibility cannot be deferred to NISCOM.

- A) **j. Law Enforcement Communications.** NISCOM will exercise policy control over Department of the Navy access to and use of the National Law Enforcement Telecommunications System (NLETS), the National Crime Information Center (NCIC) and similar national law enforcement telecommunications systems.

k. Credentials and Badges. Individuals accredited by the Commander, NISCOM, to carry out investigations and other mission related responsibilities are issued standardized credentials and badges designating them as "Special Agents." Certain categories of personnel are also issued credentials identifying them as "NISCOM Representatives." No other persons in the Navy and Marine Corps engaged in investigative, security or counterintelligence matters are authorized to use either title. Personnel issued NISCOM Special Agent credentials are cleared for access up to and including Top Secret by the Commander, NISCOM. They shall be presumed to have a need to know with regard to access to information, material, or spaces relevant to the performance of their official duties. This includes all personnel and medical records, as well as all records relating to procurement or contract matters under the control of the Navy or Marine Corps. Authority for access to special intelligence and compartmented or similarly controlled spaces, material or information shall be requested by NISCOM of the authority controlling access prior to the Special Agent pursuing a matter of official concern. NISCOM Special Agent credentials are to be accorded full recognition when presented for purposes of boarding or departing vessels or other Naval facilities. NISCOM Special Agents, as well as vehicles used by them in the course of official

business and all occupants therein, shall be exempt from routine search; persons under escort by NISCOM Special Agents will not be required to identify themselves or be impeded in any way.

l. Weapons. NISCOM Special Agents are required and authorized to carry firearms on and off all installations, aircraft and ships with the exception of specific "exclusion areas" where special weapons/systems are stored, as defined in reference (j). The need for a Special Agent to carry a firearm in such areas will be left to the discretion of the commander or commanding officer having responsibility for the "exclusion area."

m. Investigative and Counterintelligence Policy. NISCOM is the activity responsible for developing Department of the Navy investigative and counterintelligence policy, as well as policy regarding polygraph examinations, audio surveillance and other investigative or counter-measures aids.

n. Oaths. Those persons accredited by Commander, NISCOM, as Special Agents are authorized to administer oaths and take sworn statements. This authority applies only to official investigative duties in connection with the investigative jurisdiction and responsibilities of NISCOM, as set forth herein. This authority is derived from 5 USC 303(b) for civilian Special Agents. The authority vested in an individual ends when reassigned to duties other than those performed by NISCOM or upon the withdrawal of authorized credentials.

6. Limitations. Except as specifically discussed, nothing herein is to be construed as infringing upon, conflicting with, or restricting in any way the legitimate fact-finding functions of the Naval Inspector General, the Inspector General of the Marine Corps, other inspectors general, courts of inquiry or investigations conducted pursuant to the Uniform Code of Military Justice or the Manual of the Judge Advocate General. Examinations and other actions concerning the effectiveness of command

procedure for good order and discipline or the effectiveness with which command personnel have carried out their duties in these areas are not appropriate for NISCOM inquiry and should not be so referred.

7. Action. Addressees shall take such action as is expressed or implicit to ensure compliance with this instruction.

8. Report. The reporting requirements contained in this instruction are exempt from reports controlled by SECNAVINST 5214.2 series.

J. DANIEL HOWARD
Under Secretary of the Navy

Distribution:

SNDL Parts 1 and 2
MARCORPS Code PCN 71000000000
and 71000000100

Chief of Naval Operations
Navy Department
(Code OP-09B34)
Washington, DC 20350-2000 (220 copies)

SECNAV/OPNAV Directives Control Office
Washington Navy Yard, Building 200
Washington, DC 20374-5074 (65 copies)

Commander
Naval Investigative Service Command
Washington Navy Yard, Building 111
Washington, DC 20388-5000 (1,500 copies)

Stocked:
CO, NAVPUBFORMCEN
5801 Tabor Avenue
Philadelphia, PA 19120-5099 (500 copies)