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**SECURITY
DIVISION**

NEWS



**OFFICE OF NAVAL
INTELLIGENCE**

LETTER

30 June 1963

NEW DIRECTOR OF NAVAL INTELLIGENCE

On 25 June 1963, Rear Admiral Vernon L. Lowrance, USN, hauled down his flag and was relieved as DNI by RADM Rufus L. Taylor, USN. RADM Lowrance goes to New London, Conn., where he will assume the post of Deputy Commander, Submarine Force, U.S. Atlantic Fleet. RADM Taylor, who has just pinned on his stars, moves up from Deputy Director to our top spot. Admiral Lowrance takes with him the very best wishes of all the Naval Intelligence family, departmental and field, for a pleasant and successful cruise. At the same time, we heartily welcome Admiral Taylor, an old friend, and look forward with pleasure to his leadership.

REPORT TO BUPERS ON COMPLETION OF BACKGROUND INVESTIGATIONS

BuPers has indicated that they still do not receive reports of completion of Background Investigations, especially from certain overseas areas. Such reports should be submitted in accordance with ONI Instruction 5521.9A in the form of a stamped entry on a form 397. Since centralization of NACs, DIOs do not now normally have extra copies of 397's, as they only receive back one stamped copy from ONI. The solution is for the controlling District of a BI to retain at least one extra copy of the 397 before opening the case and sending the whole package in to ONI. This form can then be used for the stamped notification to BuPers when the case is completed.

MISUSE OF CATEGORY 7(c)

Although not of the volume previously noted, there is still some misuse of Category 7(c) case numbers on "own" cases which are merely Local Agency Checks (LACs), or sometimes in the case of liaison referrals to other agencies.

The controlling requirement for designating a case 7(c) is that it involves some "affirmative investigative effort" by agent personnel. Mere review of files and transcription of contents or indicating "no record" by clerks or yeomen, or even by agents, does not constitute such "affirmative investigative effort." There must also be present one of the standard investigative techniques, such as an interview, or, if review of documentation alone is involved, such review by an agent must extend to more than mere copying. It is required that there be some interpretation of contents, as in abstracting from a mass of data and preparing a digest or synopsis.

MORE ON CASE CATEGORIES

A small point, but Category 6(k) is "Larceny," not "Theft" as many reports continue to be entitled. All investigations involving violation of Article 121, UCMJ, and included or logically related offenses are to be categorized "Larceny," Category 6(k). This includes embezzlement, false pretenses, wrongful appropriation, receiving stolen goods, and so forth, as well as attempts and conspiracies to commit any of the foregoing or acting as accessory after the fact.

"Insufficient Funds Checks" cases are categorized in 6(d) under Forgery. Although the elements of the two offenses are very different, there is some relationship in that a majority of forgery cases do involve checks, and, further, the two offenses are in related Articles of the Code, viz, 123 and 123a. So put your ISF check cases in Category 6(d), not 6(k), 6(z), or 4(a), as has been the case sometimes.

Investigations of irregularities involving promotional examinations should not be carried under Category 5(a) - Compromises. They should be in Category 4(a) or a sub-category of 6 depending on the nature of the irregularity. Some may properly fall within 6(z).

OVERSEAS MONETARY ALLOWANCES

The question most frequently raised by agents ordered overseas is "what allowances, if any, will I get?" The answer varies with each location, and even then changes from time to time. The most current information, however, on additional monetary benefits payable is:

MARIANAS - 25% differential
PHILIPPINES - 10% differential
TAIPEI - 15% differential plus quarters allowance
JAPAN - quarters allowance
OKINAWA - quarters allowance
LONDON - quarters allowance
NAPLES - quarters allowance
ROTA - quarters allowance
GREENOCK - quarters allowance
PT LYAUTEY - quarters allowance
GTMO BAY - 10% differential
SAN JUAN - 12½% Cost of Living Allowance

ROOSEVELT ROADS, P. R. - 12½% Cost of Living Allowance
ICELAND - 15% differential plus quarters allowance
CANAL ZONE - 25% differential
KODIAK - 25% Cost of Living Allowance

AGENT TRAINING ACTIVITIES

Since our last issue went to press, our School program has continued, with one Basic Course, a Polygraph Course, and the biennial Supervisors' Seminar, as well as a special course for 9592 agent personnel. After our summer recess, it is expected that training activities will resume again at full capacity. The emphasis during the coming fiscal year will be on Basic Courses because of the large recent influx of new agents. It is unlikely, therefore, that Refresher or In-Service courses will be feasible again for sometime. They are not being abandoned though, merely delayed. The following is a list of the attendees at the most recent series of courses:

SPECIAL TRAINING COURSE (9592's) (7-18 JAN 1963)

Shirley M. BABB
Pearce C. BESKIN
Richard E. DORNBLASER
Bruce C. HALSEY
Edward A. LEA
Frank H. LEWIN

Clifford E. LOVELESS
David C. McGRADY
Carl G. NELSON
Paul A. SAMMON
Roger W. SMITH
Roy D. WEST

All of these agents have been assigned to components of NAVINVSUPPGRU PAC.

BASIC TRAINING COURSE 3B-63 (4-29 MAR 1963)

DIO-1ND - William T. MacINNIS
John A. RYAN

DIO-9ND - William H. FRY
Daniel J. SHEA

DIO-3ND - Edward P. GIBLIN
Paul E. PETERS

DIO-11ND - John M. STEVENS
Philip K. SPOONER
Tadashi URIU

DIO-4ND - John NESTER
George W. VOORHEES

DIO-12ND - Donald L. BENGTON
James G. McOMBER

DIO-5ND - John R. SMITH
Donald C. MORRISON

DIO-13ND - Wallace M. BEASLEY

DIO-6ND - Reed C. QUINN

IO-PRNC - Decatur T. BEACHAM
William M. CHAMBERS
David W. McCLOUGHAN
John L. RIDGE, Jr.

DIO-8ND - Neil C. HILL

POLYGRAPH COURSE PG1-63 (8-17 APR 1963)

DIO-1ND - Richard P. HOWE
DIO-5ND - Daniel F. RANKIN
DIO-6ND - Frederick E. ROBEY
DIO-8ND - Earl S. FOWLER
 Arthur J. SULLIVAN
DIO-9ND - Earl L. JOHNSON
DIO-11ND - Donald E. ROBERTS
 Jack "I" GUEDALIA
DIO-13ND - George L. MORSE

SUPERVISORS' SEMINAR (13-17 MAY 1963)

DIO-1ND - Thomas M. BLAKE	DIO-11ND - William R. CLAYTON
DIO-3ND - Harry C. DURAND	DIO-12ND - Robert D. CLAYTON
DIO-4ND - John D. GRADY	DIO-13ND - Allan R. SHEARS
DIO-5ND - James L. HANNAH	<u>DIO-14ND - William R. ANDREWS</u>
DIO-6ND - Thomas J. FENTRESS	IO-PRNC - Veikko E. LEVANDER
DIO-8ND - David J. KERR	DIO-17ND - Bernard H. STEACY
DIO-9ND - Earl S. RICHEY	ONI - Theodore FASON
DIO-10ND - Ray M. STEPHENS	

AGENT TRANSFERS

Personnel shuffling has proceeded apace during the past several months, spurred on by our continued growth and the expiration of many overseas tours during the same period. No effort is made to list the large number of intra-District transfers which have been effected; however, the following inter-District, domestic and overseas, shifts accomplished or ordered furnish a good indication of the mobility of our agent personnel:

<u>NAME</u>	<u>FROM</u>	<u>TO</u>
PARK, George R.	DIO-13ND	DIO-14ND
KLARE, Robert A.	ONI	NAVEUR (ROTA)
SIROIS, Wilfred	DIO-1ND	DIO-10ND
ZOTZ, Conrad A.	DIO-4ND	NAVINSUPPACT MAR
MOTE, Robert M.	DIO-4ND	IO-NAVEUR (LONDON)
STAGLIANO, Frank E.	DIO-4ND	IO-NAVEUR (NAPLES)
GRADY, Harry L.	DIO-11ND	NAVINSUPPACT JAP
URIU, Tadashi	DIO-11ND	NAVINSUPPACT JAP
FASNACHT, Paul L.	DIO-11ND	NAVINSUPPACT JAP
TARDIFF, Byron L.	DIO-12ND	NAVINSUPPACT JAP
DOUCET, Saul J.	NAVINSUPPACT JAP	DIO-12ND
DEMOLLI, Bruno E.	IO-NAVEUR (NAPLES)	DIO-12ND
NOWICKE, Eugene A.	NAVINSUPPACT JAP	DIO-9ND
DRAPER, Robert D.	DIO-4ND	ONI
TARBOX, Roland A.	DIO-14ND	ONI
DEAHL, Albert F.	DIO-9ND	DIO-11ND
FROST, Frederick V.	DIO-6ND	IO-PRNC
MEYER, John A.	DIO-12ND	IO-PRNC

<u>NAME</u>	<u>FROM</u>	<u>TO</u>
MURPHY, Patrick M.	DIO-6ND	DIO-3ND
ATWATER, Donald F.	DIO-9ND	IO-PRNC
WALLACE, Gardner E.	DIO-10ND	IO-PRNC
CHAMBERS, James B.	NAVINVSUPPACT MAR	DIO-4ND
AMMONS, Nathan L.	DIO-5ND	DIO-17ND
MUNSON, Robert A.	DIO-8ND	DIO-10ND
BACKSTROM, Alan T.	DIO-9ND	DIO-13ND
STEPHENS, Ray M.	DIO-10ND	DIO-9ND
MAY, Clifford J.	DIO-9ND	DIO-10ND
OEHRLE, Kenneth F.	DIO-9ND	NAVINVSUPPACT PHIL
THOMAS, Dudley B.	DIO-10ND	DIO-4ND
FISHER, Henry J.	NAVEUR (NAPLES)	DIO-9ND
NAYLOR, Joseph F.	NAVINVSUPPACT PHIL	DIO-9ND
BELL, James H.	NAVINVSUPPACT JAP	IO-PRNC
BLISS, Maurice S.	NAVEUR (ROTA)	ONI
RICHIE, James V.	DIO-9ND	NAVINVSUPPACT MAR
DOYLE, Harry J.	DIO-4ND	NAVINVSUPPACT PHIL
ALEXANDER, Tyrus C.	NAVINVSUPPACT PHIL	ONI
NOLAN, Thomas J.	NAVINVSUPPACT MAR	ONI
NICKEL, Kenneth W.	NAVINVSUPPACT JAP	DIO-11ND
HANNON, John J.	IO-PRNC	ONI
BARRON, Donald P.	IO-PRNC	ONI
O'DEA, Lawrence A.	ONI	IO-PRNC
WRIGHT, Donald	ONI	IO-PRNC
FOLTZ, William E.	ONI	IO-PRNC

If after reading this you feel an urge for far-off places, applications for overseas posts are still welcome!

RETIREMENTS

Since the last time we've mentioned it as an item in these notes, another group of old-timers have turned in their credentials and joined the ranks of the leisure class via the retirement route. "Leisure class" may not be quite accurate, however, as we understand these boys are keeping quite busy. Congratulations to all of them and every success in their new endeavors. Let's hope that in whatever undertaking they're engaged, they're free at last from the twin bugaboos of backlogs and deadlines. The new retirees are:

S/A Raymond W. WILKINSON, DIO-11ND (FIO-Long Beach). Ray completed nearly 32 years of Federal service, including his long tenure as a civilian agent, as well as active duty in the U.S. Navy and duty with the Federal Bureau of Prisons. In addition to his service in DIO-11ND, he also had a tour in Japan, during the major portion of which he served as senior agent.

Mr. Frank X. McKENNA, Investigator, ONI (Op-921D), closed out a total of nearly 38 years of Federal service when he left us in January. He had a few months over 20 years with ONI as agent, officer, and Civil Service employee, the earlier period being served as a street agent and his later years in a supervisory capacity on the Fraud and Security desks in ONI.

Mac also had service with the U.S. Public Health Service and with the District of Columbia Government before coming to ONI.

S/A Roy M. COOLEY, DIO-9ND, Senior Resident Agent, Detroit, Michigan, left us at the beginning of the year. His last consecutive period of service with ONI was for 13 years, and he had considerable time previously in an active-duty capacity in both the Army and the Navy. Roy also served for many years with the Detroit Police Department.

S/A Edwin V. DUNLOP, DIO-11ND (FIO-Los Angeles), completed his twenty years and a little over on 8 June 1963. Ed's service began as an agent in the FIRST Naval District in 1942 and includes several years of active military duty in that District and elsewhere. He returned to his civilian agent status in DIO-11ND in 1946 and for many years was the sparkplug and mainstay of the Los Angeles office. Except for a short period with another Federal agency during 1951, his service with ONI was continuous to date. Ed is a certified public accountant in Claifornia, as well as a lawyer, and his future looks very bright indeed.

S/A Francis L. SHANE, DIO-13ND, one of the real old-timers in his District, ends his career via the retirement route as we go to press on 30 June 1963. Frank first came aboard in 1942 and served during the war years. After about a year with his former employer, the Pinkerton Detective Agency, he returned to ONI in 1946 and remained continuously on duty in DIO-13ND until this date.

AGENT PERSONNEL ADMINISTRATION NOTES

When agents are transferred out of the District, please forward the individual's investigative file to the new District.

Whenever letters of commendation or other attachments are submitted with Evaluation and Qualification Reports, send two copies please.

The data cards required by Section 10007 of the Agents' Administrative Manual are an invaluable source to ONI in matters of agent personnel administration, provided they are kept current. All significant changes should be reported as occurring. Particularly pertinent are changes in dependency status, new educational or professional achievements, such as receipt of a degree, admission to the bar, etc. Completion of ONI schools is recorded here and need not be reported.

NEW AGENTS

Although we're still backlogged and short-handed, a glance at this list of our newest agents should give the feeling that help is on the way! Welcome aboard to:

<u>NAME</u>	<u>DIST</u>
PALMUCCI, Victor J.	1ND
SEEHORN, Frederick R.	5ND

<u>NAME</u>	<u>DIST</u>
BROWN, George B.	6ND
MC CULLAH, Lenny E.	12ND

<u>NAME</u>	<u>DIST</u>
ADDISON, Millard E.	12ND
WALSH, Gerald R.	PRNC
MINNICK, John J.	8ND
NESTER, Theodore F.	4ND
HOPKINS, Gordon R.	PRNC
McKENNA, Richard	PRNC
CROSSMAN, Gordon W.	PRNC
COLEMAN, Alvin A.	6ND
WELD, George L.	6ND
MIKULSKI, Robert F.	4ND
HOLDRITH, Harold J.	9ND
BIGONESS, James P.	9ND
LAWSON, Charles F.	9ND
GRIFFIN, James H.	3ND
FORAN, William F.	3ND
SPRADLEY, Clayton M.	6ND
THEIBULT, Joseph V.	6ND
BURCH, Robert H.	6ND
BENSON, Luke P.	6ND
SCHLICHTMAN, John D.	PRNC

<u>NAME</u>	<u>DIST</u>
DENAULT, Dana K.	1ND
TAUBE, Emil E.	4ND
CORMICK, Louis C.	5ND
MC CARTNEY, Robert L.	4ND
STEFFEN, Milton N.	9ND
LAUGHTIN, Donald R.	12ND
PERRIN, Anthony W.	12ND
KLARE, Robert A.	NAVEUR
BELAU, William P.	6ND
WILLIAMS, Thomas C.	6ND
KUHAR, Michael A.	4ND
OLSON, John V.	11ND
HUDSON, John W.	6ND
FRUTIGER, Marvin	5ND
MC LAUGHLIN, George R.	1ND
ENTAS, Leon J.	1ND
FOLEY, Daniel R.	9ND
LARSON, Donald A.	9ND
MORAN, Harold J.	4ND

HUMAN INTEREST STORY

One of the newcomers listed above, Ted NESTER, joins his identical twin brother, John NESTER, as an agent in DIO-4ND. This is the first time in the memory of old hands around ONI that we've had twin brothers serving as agents. Fortunately (or unfortunately) they're serving in different offices, John at RA, Pittsburgh, and Ted at RA, Cleveland. Assignment of both of them on the same surveillance, or as an interrogation team, could present some interesting possibilities!

ONI ANNUAL SPRING GOLF TOURNAMENT

The ONI annual spring golf tournament was held at Argyle Country Club, Layhill, Maryland, on 24 May 1963. There were 24 participants from ONI and PRNC, including RADM Lowarnce and RADM Frost. Low medal winner was Hank Schultz, ONI, and low net winner (handicap) was W. S. Robinson, ONI.

THE SCOOP

Here's a partial list of directives published over the past several months which are of interest to investigative personnel. If you haven't seen them yet, you should make an effort to do so.

<u>DIRECTIVE</u>	<u>DATE</u>	<u>SUBJECT</u>
ONI Notice 12040	21 Feb 1963	Naval Intelligence Agents - Assignment to Overseas Areas
ONI Notice 5520	6 Mar 1963	Case Processing; expediting of

<u>DIRECTIVE</u>	<u>DATE</u>	<u>SUBJECT</u>
✓ ONI Notice 5520	1 Apr 1963	Background Investigations; dissemination of undeveloped leads in
ONI Notice 5210	2 Apr 1963	Negative Local Agency Checks; simplification in reporting procedures of
ONI Notice 12040	11 Apr 1963	Special Agents for Assignment at ONI
ONI Notice 12130	16 Apr 1963	Agents' Performance
✓ DNI ltr ser 5736P92 of 8 May 1963 to Distribution List	8 May 1963	Background Investigations Conducted on Behalf of the National Security Agency (NSA)
ONI Notice 5600	13 May 1963	Manual for Courts-Martial, United States, 1951; availability to Agent Personnel
✓ ONI Notice 5800	13 May 1963	Immigration and Naturalization Service Checks; simplification of reporting procedure for
DNI ltr ser 18343P92 of 29 May 1963 to Distribution List	29 May 1963	Processing Industrial Personnel Access Authorization Cases
ONI Notice 12531	4 Jun 1963	Naval Intelligence Agents, Pay Grade 11; allowance and promotion procedures
ONI Notice 8011	11 Jun 1963	Increase of Annual Allowance of Ammunition for Training
ONI Instruction 5510.12	24 Jun 1963	Industrial Personnel Access Authorization Review Regulation

A HANDY REFERENCE

A publication, "Physician's Desk Reference to Pharmaceutical Specialties and Biologicals (PDS)," is published annually by Medical Economics Inc., Aradell, N. J., and is apparently furnished free to physicians by manufacturers of ethical pharmaceuticals. This publication contains a Product Identification Section, showing over 500 capsules and tablets in actual size and color for identification purposes. One District has found a copy of the 1962 edition to be very useful in the rapid preliminary identification of tablets and capsules seized in narcotics investigations. Identification of a large number of ethical pharmaceuticals is possible, thus eliminating wasted effort in conducting investigations and laboratory investigations.

Of course, if barbiturates, amphetamines or unidentifiable drugs are found, laboratory examination is still required to establish legally admissible identification. The PDR, however, is a valuable aid to investigation and is recommended for acquisition.

LEGAL NOTES

A recent decision by the U.S. Court of Military Appeals on the subject of search and seizure will require alteration to the somewhat relaxed procedures which have heretofore prevailed in this field.

In the case in question, US vs. BATTISTA, decided May 31, 1963, the accused had been found guilty below on charges and specifications involving violation of Article 133 - conduct unbecoming, etc., and 125 - sodomy. Conviction was upheld by a Board of Review and appeal was granted on the issue of whether a search of accused's stateroom and seizure of certain items therefrom was lawful.

Evidence adduced at trial was that agents had questioned the accused and that he was "very evasive" and refused them permission to search his stateroom.

The agents consulted the Captain of accused's ship, made known the foregoing matters to him, and requested his permission to search the accused's office and his stateroom to see if they could find "some evidence of a homosexual nature, pornographic literature, names, and correspondence." The purpose of the search was to, if possible, uncover something "of a nature that would suggest homosexuality. Pictures of nude men, things of that nature." It was "standard procedure." The Captain authorized the search of the office and the stateroom.

The agent's examination of the office turned up nothing which was admitted in evidence at the trial. In accused's stateroom, however, various photographs and cartridges of undeveloped film were discovered, the latter being subsequently developed and printed. Despite defense counsel's objections on proper grounds, these were introduced in evidence.

The Court duly noted that the commanding officer of a naval vessel undoubtedly has the authority to order a search of his ship when the interests of safety and security demand it (citing various authorities) but that situation was not involved here and is clearly to be distinguished from the commander's right to order the search of the personal effects of a member of his crew as part of an investigation into a suspected offense (US v. Brown 28 CMR 48). Quoting the Court "as we noted in the BROWN case, the grant of authority by a commanding officer to search the quarters or personal effects of an individual must be based upon probable cause. Absent a demonstration to him of such cause, he cannot lawfully permit such action. Here there was no such probable cause. The agents had no reason to believe that the accused had possession of any instrumentalities of his crime, its fruits, or other proper objects of a search. (citing cases). The search was simply instituted for the purpose of securing evidence with which to convict the appellant of sodomy. A general exploratory search for matter which is not directly connected with the commission of a suspected offense is forbidden." (underscoring supplied).

Quoting further from the opinion, "According to the agents, they obtained authority to search accused's stateroom only because it was 'standard procedure' to do so, and accused had been 'very evasive' during their interview with him. They had no idea what they might find, but believed that evidence of a 'homosexual nature' would be uncovered. Their reasons were purely intuitive, and not the slightest factual basis was offered to the commander for the proposed examination of accused's effects."

"Their quest was purely an exploration of accused's effects in the hope of obtaining proof of his guilt, without any knowledge of what it might be or that accused was in possession of it. These matters were boldly admitted by the agents in their testimony, in which they frankly stated seeking 'some evidence of a homosexual nature,' with which to secure the conviction of _____ for sodomy. Patently, this was not a search for the fruits of a crime, its instrumentalities or any other proper object of search. Here, the search was 'exploratory and general and made solely to find evidence of respondents' guilt of . . . crime.' It was, therefore, illegal, and the law officer erred in admitting the films and photographs in evidence."

With considerable additional discussion and a partial dissent by one Judge, the Court reversed the decision of the court-martial as approved by the Board of Review.

ONI Comment: This general exploratory type of search has been practically standard procedure in the past, particularly in Category 6(j)1 cases, although obviously of questionable legality. The reason has been perhaps, rightly or wrongly, because such cases only infrequently go to trial and therefore the question of the reasonableness of the search and seizure is not likely to arise. It may be expected that in the future commanding officers will be unwilling to permit searches without probable cause even in 6(j)1 cases. Even should such a search be made, anything of evidentiary value seized will almost inevitably be inadmissible. Moreover, it's quite possible that any confession obtained from a suspect after such a search may likewise be held to be inadmissible as it can be successfully contended to have been induced by the fruits of the illegal search.

It should be noted that the issue discussed here applies only to the one particular type of search and seizure, i.e., one conducted upon the authority of the military commander. Injecting the requirement of probable cause prior to the issuance of search authority by the commander makes this transaction similar in many respects to obtaining a warrant from a civil magistrate. In a recent Army case, a Board of Review has held "The test for the existence of probable cause is the same in military law as in civilian practice" and further, "Generally, probable cause to search exists if the facts and circumstances justify a prudent man in concluding that an offense has been or is being committed." US v. Maginley, 32 CMR _____. However, the strict requirements of civil practice are somewhat modified by this conclusion of the Board of Review in the same case (Maginley, supra): "Although a military commander does not possess unlimited power to search persons and property under his command, he is not circumscribed by all the refinements applied in civilian cases since

completely different factors and circumstances confront a commander in authorizing a search than confront a judicial officer under civil law and in determining probable cause in the military. Reference must be made to the facts of military life and, if reasonable under all the circumstances, a search is not unlawful and is based on probable cause."

Referring back to the principal opinion above (BATTISTA), please note that there is no question as to the commanding officer's authority to order a search where the security and safety of the command are concerned. Many of our searches will continue to fall into this class, and, particularly where it appears unlikely that any court action will eventuate, it may still often be feasible to conduct exploratory types of searches.

Another interesting search and seizure case recently decided by the U.S. Court of Military Appeals involved the scope of a search conducted incident to the apprehension of the suspect by Naval Intelligence Agents. In this case, involving the unlawful sale of Navy promotion examinations, the agents went to the accused's apartment accompanied by a man who had been approached by the accused to buy a copy of the exam. An agent entered the apartment with the man and saw him purchase what appeared to be a copy of the exam from the accused. Then the accused accompanied the two men to a porch just outside the apartment where the agent revealed his identity and apprehended the accused. "The apprehension being legal," said the court, "a valid search could be made incident thereto and it could extend beyond the person of the one arrested to include the place where the arrest was made. Under the circumstances herein, a search of the accused's apartment incident to his apprehension on the porch just outside was reasonable. Evidence that the search included only a bedroom to which the accused took the agents and produced some examinations, the dining room, and the kitchen, in which a copying machine was apparent, and that another bedroom in which the accused's children were quartered and the living room were not searched and that the accused was informed the agents were looking for examinations, established the extent of the search was reasonably limited and it was not a general exploratory search. The fact that the agents discovered and seized a number of wrist watches which subsequently became the subject of larceny charges did not render the search unreasonable since officers may, during a lawful search, seize items relatively apparent even though the original purpose of the search did not relate to those items. The fact that the agents obtained some bank statements, which were later returned, did not make the search unreasonable since, assuming they were improperly obtained, the seizure of a few minor items which were not used against the accused, does not so taint the proceedings as to make unreasonable an otherwise reasonable search and seizure." US v. Ross, 13 USCMA 432, 32 CMR 432.

ONI Comment: This accords with a series of Federal cases in the area, especially Harris v. U.S., 331 US 145, 91 LEd. 1399, 67S.Ct 1098. It clearly indicates that a search incident to apprehension may extend not only to property within the accused's immediate physical possession, but also to the premises where the apprehension was made, subject to standards of reasonableness which this case illustrates. Moreover, when conducting a lawful search, other apparently relevant items may also be lawfully seized even though the original purpose of the search did not relate to those items.

In US v. WALBERT, an Air Force case, decided by the Court of Military Appeals on May 10, 1963, it was held that the law officer erred in refusing a defense request for the production and inspection of a tape recording for an interrogation of the accused by agents of OSI which resulted in the accused's submission of a confession. At issue was a defense contention that certain particulars of the interrogating agent's testimony at the trial were false and that reference to the tape would establish this falsity, thus impeaching his testimony. In brief, the law officer and the Board of Review did not think that 18 USC 3500, the so-called Jencks Act, which deals with the production of a previous statement by a Government witness, included a tape recording of an interview between the accused and an enforcement agent. The Board of Review held that the agent's remarks at the interview did not constitute a statement "to an agent of the Government" within the meaning of the statute, but were statements to the accused. It, therefore, concluded that the accused had no right to production of the tape of the interview.

The Court of Military Appeals however reversed the Board of Review stating, inter alia, "Before enactment of 18 USC 3500, it was settled law that for the purpose of possible impeachment, the defense could require the Government to produce the previous statement of a witness relating to the subject matter to which the witness had testified under direct examination. *Jencks v. United States*, 353 U.S. 657. The rule was followed in the military practice. *United States v. Heinel*, 26 CMR 39. Fearing that a too-expansive reading of the *Jencks* case "would compel the indiscriminating production of agent's summaries of interviews regardless of their character or completeness," Congress passed Section 3500 to limit production to statements made by the witness, as distinguished from mere summaries of information obtained by him. *Palermo v. United States*, 360 US 343, 350. The limitation, however, was not intended to curtail the defendant's right to "reports and statements in possession of the Government touching the events and activities as to which a Government witness has testified at the trial." Senate Report No. 981, 85 Congress, 1st Session.

"The tenor of Government counsel's argument here, and that of the opinion of the Board of Review below, appear to concede that if (the agent) had filed a verbatim report of what he said and did at the interview, the accused would be entitled to the production of that writing. We perceive no distinction between such a report and the tape recording. Each represents precisely what the agent previously said in regard to the subject matter as to which he testified in direct examination." We agree that the accused is entitled to at least that much, especially since the tape related to the admissibility of his confession. We therefore answer in the negative the first certified question, which asks whether the board of review was correct in its determination that denial of the defense request for production of the tape did not violate the Jencks Act."

ONI Comment: Hardly any comment necessary. Be prepared to provide tapes if directed by the law officer. Request instructions by rapid means from ONI in any unusual set of circumstances.