

# NCIS Bulletin



Volume I

United States Naval Criminal Investigative Service

Edition 5

**May 1995**



**SECRETARY OF THE NAVY JOHN DALTON AND DIRECTOR ROY D. NEDROW**

(Photo by Gary M. Comerford)

## ***In This Edition ...***

**Actor Steven Seagal  
Visits Headquarters**

**"Heavy Metal" Turns  
Out To Be A Big Hit With  
Grand Jury In Philly**

**Atlantic Command  
Staff Tour Benefits  
Navy And NCIS**

*KINOMEX*

# Director's Message . . .



Congratulations to the Philadelphia Resident Agency and all participating agents for their outstanding performance on a three-and-a-half year undercover operation, which brought Federal indictments against 19 suspects and recovered over \$1.5 million in stolen government property.

I must admit that the image that popped into my mind when I read about two undercover agents trying to keep a forklift from falling off their truck on the George Washington Bridge is something I won't forget, either. It was one of several interesting anecdotes detailed in a story in this edition of the *Bulletin* that provides an insider's look into the highly successful "Heavy Metal" undercover operation.

A lot has been going on around NCIS these days, enough, in fact, to fill this edition without having to resort to historical events as filler.

Visits to headquarters by Secretary of the Navy John Dalton and the very popular movie actor and martial arts expert, Steven Seagal, were two interesting events which took place recently. Both are highlighted in this

issue, including the ceremony in which Secretary of the Navy Dalton presented a cash award to Special Agent Jeff Norwitz for his outstanding work on a highly classified counterintelligence operation.

It's also good to see that our talents extend far beyond the field of investigations. A group of NCIS special agents in the San Diego area demonstrated their theatrical talents by organizing and producing a family-oriented showcase in recognition of "Black History Month."

I highly recommend all of you take the time to read the piece written by Assistant to the Director Rick Machin. He provides insight into the very important mission we assumed when he was named as the Assistant for Law Enforcement Liaison to the Commander-in-Chief, U.S. Atlantic Command / Supreme Allied Commander, Atlantic, North Atlantic Treaty Organization.

Another article, written by Lt. Larry Zieff of the NCIS Counsel's Office, provides an excellent overview of a recent case involving NCIS in which the U.S. Supreme Court ruled that a suspect's ambiguous reference to attorneys does not constitute a request for counsel.

The professionalism of this organization continues to be visibly demonstrated through the actions of its talented employees. Nowhere was it more evident than in the performance exhibited by Computer Specialist Thelma Fugere, whose many achievements earned her the title of "1994 Civilian of the Year."

And it's nice to see that we continue to be competitive outside the office. I refer to Special Agent in Charge Cliff Simmen and his fellow runners in Hawaii who made a very good showing in the Oahu Perimeter Relay Race. That was quite a run—all 134 miles of it!

These editions chronicle the quarterly activities and accomplishments of the organization and its most valuable resource—you. Just like the *Bulletin*, the organization gets better every quarter. Keep up the good work.

A handwritten signature in cursive script that reads "Roy D. Nedrow".

ROY D. NEDROW  
Director

There is a need for enhancing communication between headquarters and the field elements of the Naval Criminal Investigative Service (NCIS). We can satisfy this need and increase our effectiveness in serving the Department of the Navy by selectively publishing information of interest to the members of NCIS. This *Bulletin* is intended for use by all members of the NCIS.



# NCIS Bulletin

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Department of the Navy**

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Any comments or suggestions should be forwarded to: Naval Criminal Investigative Service, Office of Government Liaison and Public Affairs (Code 075), Washington Navy Yard Building 111, 901 M Street S.E., Washington, D.C. 20388-5380.

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**ON THE COVER** — Secretary of the Navy John Dalton is welcomed to NCIS Headquarters by Director Roy D. Nedrow. Standing in the background is Navy General Counsel Steven Honigman. NCIS reports directly to the Secretary of the Navy through the Navy General Counsel.

# Secretary of the Navy John Dalton and Actor Steven Seagal Visit Headquarters

Secretary of the Navy John Dalton and actor Steven Seagal recently visited Naval Criminal Investigative Service (NCIS) Headquarters.

Secretary Dalton took time from his busy schedule in order to recognize Special Agent Jeffery Norwitz for his outstanding success in a highly classified counterintelligence operation.

Special Agent Norwitz was presented with a Secretary-approved award and a cash bonus by Secretary Dalton during ceremonies held before a large gathering in the atrium of NCIS Headquarters at the historic Washington Navy Yard on Tuesday, February 21, 1995.

"I am sincerely grateful for all of the hard work and the dedication of every NCIS employee -- the agents, the intelligence analysts, the admin support, and the military staff," Secretary Dalton told those in attendance.

"Today's ceremony is an outstanding example of how one agent's innovative approach to a problem, coupled with his experience and dedication to his profession and his country, assisted the Navy in maintaining a technological edge, while at the same time providing an enormous monetary savings



**AWARDS CEREMONY** - Secretary of the Navy John Dalton presents award to Special Agent Jeff Norwitz. (Photo by Bobby J. Leek)

to the Government," Secretary Dalton said. "The efforts of Special Agent Jeff Norwitz in support of a highly sensitive Navy program allows us to assess and, more importantly, neutralize a very real threat heretofore posed by our adversaries. His effort embodies the diversity of the NCIS counterintelligence support to the Navy's systems commands."

In closing his address, Secretary Dalton said, "I am most appreciative for this opportunity to meet with you today and I wish you success in your daily mission to 'Protect and Serve' our military members, their families, and the Department

of the Navy civilian employees."

Prior to introducing Secretary Dalton, NCIS Director Roy D. Nedrow said, "Special Agent Norwitz has made an extraordinary contribution to the national security effort; however, the project and his actual accomplishments remain highly classified and can not be discussed in any detail."

Other senior officials attending the ceremony included: Mr. David Burt, Deputy Director of Counterintelligence and Security, Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (C3I); Mr. Steven Honigman, Navy

General Counsel; Ms. Leigh Bradley, Navy Principal Deputy General Counsel; Rear Adm. Michael Cramer, USN, Director of Naval Intelligence; Rear Adm. Richard Riddell, USN, Director of Navy Special Programs; and Rear Adm. Dwaine O. Griffith, USN-Ret., the former Director of Navy Special Programs.

### SEAGAL VISITS NCIS

The highly popular Seagal and his producer, Jules Nasso, visited NCIS Headquarters on March 1.

Seagal became acquainted with NCIS through local law enforcement personnel in the New Orleans area (Jefferson Parish), who had worked with NCIS special agents on joint investigations.

After meeting with NCIS special agents, Seagal expressed an interest in learning more about the organization. As a result, Director Nedrow invited him to NCIS Head-

quarters for a tour.

During his visit, Seagal was provided with tours and briefings of the Criminal Investigations Directorate, the Counterintelligence Directorate, and Technical Services.

Seagal is a sixth dan Aikido master and also holds black belts in judo,

karate, and kendo. He is an expert marksman and an avid gun collector who has a special preference for .45 semiautomatics. He is a student of Asian philosophies and is a Shinto priest.

The 6-foot-4 actor is the most highly paid martial arts star in Hollywood. His movies include "Above the Law" (1988) and "Hard to Kill" (1990), which earned a total of over \$65 million; "Marked for Death" (1990), which was released by Twentieth Century Fox and made over \$50 million; "Out for Justice" (1991), which made over \$32 million in its first month of release; and "On Deadly Ground" (1994), which has just been released on video.



**WELCOME TO NCIS** - Actor Steven Seagal, center, is welcomed to NCIS by Director Roy D. Nedrow. At left is Assistant Director for Criminal Investigation John F. McEleny. At right is Assistant Director for Government Liaison and Public Affairs Robert J. Finch II.

(Photo by Gary M. Comerford)



**THE CENTER OF ATTENTION** - Actor and martial arts expert Steven Seagal drew a lot of attention during his recent visit to NCIS Headquarters. (Photo by Gary M. Comerford)



## Undercover Op Nets 19 Indictments

# "Heavy Metal" Is A Big Hit With Federal Grand Jury In Philadelphia

By Gary M. Comerford  
Bulletin Editor

When the Naval Criminal Investigative Service (NCIS) and the Federal Bureau of Investigation (FBI) initiated "Heavy Metal" four years ago, no one imagined just how successful the joint undercover operation targeting the theft of U.S. Government property was going to be.

The facts speak for themselves:

- \* Over \$1.5 million worth of stolen government property was recovered.

- \* Nineteen individuals, including 11 former or current military members, were indicted in connection with the case by a Federal grand jury on charges ranging from theft of government property to conspiracy. Most were taken into custody during a massive roundup on February 7, 1995.

- \* By the time legal proceedings are concluded against the 19, the total number of years confinement awarded could go as high as 850 years, and the amount of fines levied by the courts could reach \$21 million.

- \* Despite some close calls, two NCIS special agents and an FBI counterpart lived, worked and survived in "deep cover" as purchasers of stolen property for three-and-a-half years.

- \* During that time over 240 consensual intercepts were conducted.

- \* And all this was accomplished at a cost to the NCIS of slightly over \$72,000 (not including salaries).

By even the most stringent standards, "Heavy Metal" was an obvious success.

"It is one of the most successful operations targeting the theft of government property that the NCIS has ever run with the FBI," said Robert J. Sotack, Special Agent in Charge (SAC) of the NCIS Metropolitan Northeast Field Office. "The FBI deserves a lot of credit. It was great working with them. This is the way a joint operation should work and could be a model for others."



**PRESS CONFERENCE - Robert J. Sotack, Special Agent in Charge of the NCIS Metropolitan Northeast Field Office (left), and Michael R. Stiles, U.S. Attorney for the Eastern District of Pennsylvania, respond to reporters' questions about "Heavy Metal."**

Even the news media applauded the event.

"Media coverage was nationwide," Sotack said. "It was on the nightly news. Coverage ranged from the *New York Times* to the tabloids. I even got an E-mail from one of our SACs on the West Coast which said, 'I was on the way home and lo and behold I heard your voice on the radio discussing "Heavy Metal." Congratulations. Great op!'"

So those are the facts and in most cases, this is where coverage of this story would end.

But undercover operations are more than just a collection of facts and figures. They are pieces of the lives of the men and women who are willing to take what are at times incredible risks for the benefit of the communities they serve.

In the case of "Heavy Metal" it all began because a new supervisor was willing to listen.

### **A DEFINITE CHANGE**

When Mark Fallon left the NCIS Resident Agency in Kings Bay, Georgia, four years ago to be the Resident Agent in Charge of the NCIS Resident Agency in Philadelphia, it involved a lot more than

just changes in location and climate.

In the rural community of Kings Bay, a couple of break-ins constituted a crime wave. In "Philly," on the other hand, things as large as jet engines could disappear without anyone taking notice.

Since he was unfamiliar with his new turf, Fallon decided to ask the subject-matter experts -- the agents who were already there working the streets. Then he listened.

"When I got up here in 1991, I asked the office what the biggest problem the NCIS Resident Agency in Philly was experiencing. The overwhelming response was larceny of Government property," Fallon said. "At that time the office had a number of successful shallow cover transactions, so we decided to bump it up a notch and utilize that as a springboard to attack the systemic problems. The idea and subsequent undercover operation was a team effort from the start."

Eventually, the team comprised to carry out the operation would include Special Agent Charles A. "Chuck" LoPresto, the NCIS case agent; his counterpart, Special Agent Albert Bodnar, the FBI case agent; NCIS Special Agent Robert McFadden, the contact agent; and NCIS Special Agents W. Dale Laing and James T. Rivera, and FBI Special Agent Jeff Grizzle, who drew the undercover assignments.

Others contributing to the case included NCIS

Special Agents Jeffery J. Ferich, Robert W. Milie, Richard D. Saul, John J. McGuire and John R. Snedden, who performed a variety of support activities ranging from handling cooperating witnesses to conducting surveillances.

Guiding the effort through a maze of potential legal pitfalls was U.S. Attorney for the Eastern District of Pennsylvania Michael R. Stiles and Assistant U.S. Attorneys Valli Baldassanno and Timothy Susanin.

"There were so many unsung heroes on this case," Rivera said, adding that it would be almost impossible to name everyone involved. "The guys in this office would drop what they were doing to help us. They would meet us before or after work. And I never heard anyone complain. They deserve an awful lot of credit because they made it bearable for us out there."

### THE PERFECT COUPLE

When it came time to choose the agents who would go "out there," the choice was an easy one for Fallon, although to some outsiders it may have seemed unlikely.

In terms of length of service, every other person in the 950-member NCIS special agent corps is junior to Laing. When Laing joined the organization in 1965, Rivera was just four years old. Yet despite a difference of 19 years in their ages, Laing



**THE KEY PLAYERS** - Shown are the key players in the highly successful undercover operation called "Heavy Metal." From left to right they are: Special Agent Al Bodner, the FBI control agent; Special Agent Jeff Grizzle, the FBI undercover agent; Special Agent Mark Fallon, Resident Agent-in-Charge of the NCIS Resident Agency in Philadelphia; and Special Agents James T. Rivera and W. Dale Laing, the NCIS undercover agents.

and Rivera were not "the odd couple" as some might have imagined.

Not only were the two NCIS special agents good friends, but they had also worked together on other undercover operations, including one targeting a gang comprised of civilians and military members suspected of selling drugs and guns. Due to the efforts of Laing and Rivera, five members of the gang went to jail, including two of the leaders who are serving 20-year sentences.

So when it came to picking "volunteers" for the job, Special Agents Laing and Rivera were "the perfect couple."

"Both Dale and Jimmy were in a deep cover capacity for the entire time, a period of about three-and-a-half years," Fallon said. "That meant they lived the life.

"Dale acted as a yard worker, driving a truck for the Philadelphia Naval Shipyard (PNSY) Transportation Department," Fallon continued. "Jimmy operated as a scrap dealer out of the storefront we set up. Jimmy also infiltrated one of the businesses we suspected of fencing stolen property and worked there for three months doing physical labor along side of the bad guys."

#### **LEARNING TO PLAY "HEAVY METAL"**

Laing had worked in the Philadelphia area for a number of years and was familiar with life in the shipyards. For Rivera and his FBI counterpart Grizzle, however, this was new turf and they needed a little training in order to better play their roles.

"We arranged it (training) with the help of an NCIS reserve agent, Bill Seidenstein, who happens

to be a detective lieutenant with the New York City Police Department," Fallon said. "Bill is a lieutenant commander in the Naval Reserve and had worked with us before as a reservist. He arranged to have a legitimate scrap dealer teach the undercover agents how they should operate."

The training took place in Brooklyn, New York.

"Jeff and I went up to an actual scrap yard and worked there for a week to learn the ropes," Rivera said. "They actually had us working in there, learning the trade. That's how we obtained our background."

"We really learned a lot about the scrap business," Rivera continued. "What you do is procure certain metals and then sell them to smelters. What would happen is you would obtain large amounts of metals and then depending on how the commodities market fluctuated would determine what you would sell or buy, and for how much.

"On any given day for something like red copper or monel, which is a very precious and expensive alloy made of copper and nickel, the price would fluctuate and you would have to buy at that cost. We learned all this through the training we received prior to opening up the storefront."

A few weeks later, the storefront was opened in a dilapidated old building under the name of Scrap Salvage, Inc. Soon the white truck bearing the Scrap Salvage name became a familiar sight around the shipyards and military installations in the Philadelphia area.

From that location undercover agents would purchase a variety of stolen government property, including a large volume of precious metals and alloys, which were high in both value and weight. One piece of monel recovered by the agents was so heavy, according to Special Agent in Charge Sotack, "that it tipped a fork lift."

Since these metals and alloys were among the primary objects of theft, it seemed appropriate to dub the operation "Heavy Metal."

#### **LIFE UNDERCOVER**

Life is rarely as simple as it seems. It would be nice to believe that the bad guys all wear black and the good guys wear white -- but they don't.

When you work three-and-a-half years undercover, you have to get close to people in order to do your job. In many cases, it was easy to dislike the thieves. But then there were other cases...

"I found some of them hard to dislike, even though I didn't like what they were doing," Laing



**THE "STORE" - This is the building NCIS and FBI undercover agents operated out of for over three years posing as buyers of stolen U.S. Government property.**





**SURVEILLANCE PHOTOS** - These surveillance photos were taken in December, 1992. The left photo shows NCIS Special Agent Jim Rivera, followed by FBI Special Agent Jeff Grizzle, hauling off bomb racks as two suspects in the truck look on. The right photo shows Special Agent Rivera standing behind the "Scrap Salvage, Inc." truck talking to a suspect.

said. "I'm not talking about the *Stockholm syndrome*. I really got to like some of them.

"We had to work with a lot of different people in order to get information. I found that some of these people were very intelligent and politically astute, even though they didn't have a very good formal education."

These were still the "bad guys," however, and there were periodic reminders that this was still a very dangerous game -- like the time a known cocaine user threatened to kill Special Agent Laing. Fortunately, that individual ended up going to jail for another offense not related to "Heavy Metal."

"On one occasion a group of suspects threatened to 'roll' Special Agent Grizzle and myself because we bargained too low for some stolen property," Rivera said, recalling another close call.

Leading two lives meant having to work twice as hard because you had to keep up with two jobs.

"We were working six days a week, ten hours a day," Rivera said. "Then we had to come back and do paperwork. We had to meet with the control agent periodically. A 12-hour day was the norm."

Living undercover also meant learning to cope with fear and doubts. It meant always having to look over your shoulder. Is your disguise good enough? Have you blended in with the life-style? Is someone going to recognize you?

For Laing and Rivera, those questions would not go unanswered.

"We had set up a deal to go on base and make a buy," Laing explained. "When we drove up, I recognized one of the people we were going to buy from. He had worked at the (naval) base gas station where we used to fill the government cars, but he had switched jobs.

"By the time I saw him, it was too late to pull away," Laing continued. "So we just went through with it. I had long hair and a goatee, and he never recognized me. We looked just like everyone else and fit right in."

### DO YOU REMEMBER...

Because of the nature of the job, police work -- especially undercover police work -- breeds a special type of synergy among the participants which often results in a permanent, common bond. Even though career patterns and subsequent assignments may separate them, years later when they meet their conversations will eventually turn to the experience they shared and sooner or later a sentence will begin with "Do you remember..."

For Rivera and Grizzle, one of those memorable experiences occurred right in the middle of one of the most heavily travelled bridges in the world.

"One time the people where we were working had us take a fork lift up to New Hampshire," Special Agent Rivera said. "Suddenly we found ourselves on the George Washington Bridge with the fork lift about to fall off our truck. Fortunately, we were able to get it back on, but that was an experi-

ence neither one of us will ever forget."

There were two other memorable experiences involving crime solving -- only they involved other crimes.

"A dangerous career criminal who was planning to commit an armed bank robbery actually tried to solicit Dale to drive the getaway car. Obviously, he didn't know about Dale's driving record," Fallon said, kidding about Laing's reputation for putting dents in government cars.

"Instead of utilizing Dale and Jimmy, we introduced a separate FBI undercover agent, so we could insulate Dale and continue the undercover storefront operation," Fallon continued. "The individual was subsequently convicted of conspiracy to commit armed robbery and possession of

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***"A dangerous career criminal who was planning to commit an armed bank robbery actually tried to solicit Dale to drive the getaway car."***

**- Resident Agent in Charge Mark Fallon**

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firearm. He was sentenced in Federal court to 25 years in prison."

There was also a series of burglaries the undercover agents resolved.

"There were four burglaries that had occurred almost one right after the other at Naval Station Philadelphia around October and November 1992," said LoPresto, the NCIS case agent. "They occurred at offices on the base, including the chaplain's office. The items that were taken were sold to us the next day at a fraction of the original cost. The individual involved was not arrested at the time, but was indicted and taken into custody."

Another memorable instance involved a somewhat humorous twist of irony.

"Early in the operation our people were looking for space to store stolen goods that were being purchased," Fallon said. "They found one storage area that really looked good, but the person in charge of it apologetically declined to allow them to use it because he needed it to store some big equipment he was getting. About a year later, undercover agents bought the equipment from four military personnel who were later indicted."

Then there was the case of the now-famous dump truck which made the news when the case broke. The truck, valued at over \$36,000, had been used by suspects to transport stolen goods purchased by undercover agents Rivera and Grizzle.

"At the end of the transaction, we asked them what they were going to do with the dump truck," Rivera said. "Jeff and I told them, 'We'll give you \$200 for it.' They just looked at each other, drove away in a car and left the truck there."

## **SOME BIG SURPRISES**

Even veteran law enforcement officers were surprised by the magnitude of the theft problem "Heavy Metal" revealed.

"We anticipated that as we moved to closures resulting from base realignments that we would see a rise in theft of government property," Sotack said. "But what surprised me was the extent. Some of them were so successful and pervasive that you could order things. One co-conspirator told us he had someone on the inside who would delete the item from the command inventory so there would be no record of theft and no paper trail."

Not only the amount, but the type of equipment undercover agents were able to purchase was amazing. In one instance, undercover agents purchased two jet turbine engines for a P-3 aircraft that were taken off the Naval Air Station at Willow Grove in a dump truck.

"The most common stuff was precious metals coming off the base," LoPresto said, describing a variety of bolts and equipment made of special alloys. "Other gear included three mobile medical units that were like small field hospitals that fit in connex boxes. These are the type you could drop in the field. There were bomb rack assemblies and ammunition storage racks for mechanized vehicles. We bought a wood chipper."

Although a lot of the stolen property came from military facilities in and around the Philadelphia area, there was property from other installations in other states.

"We travelled down to North Carolina and bought M151 military jeeps," LoPresto said. "They were bought from a suspect who liked the undercover agents so much that he invited them to stay at his house. But the undercover agents graciously declined."

There was another surprise, too.

"The total dollar value (of the stolen goods recovered) was estimated at over \$1.5 million,"



## Tagging The Evidence

*NCIS Special Agents Robert McFadden (left) and Robert W. Milie tag one of the two stolen jet engines purchased by undercover agents. The engines were for use on P-3 aircraft and were stolen from the Willow Grove Naval Air Station.*

*Other stolen items purchased by undercover agents included sewing machines, a large generator, and a variety of computer equipment.*

Sotack said. "The thing I find particularly curious is that the reported losses were minimal!"

### THE ROUNDUP

Based on the evidence and information presented by the NCIS and the FBI, a Federal grand jury handed down indictments against 19 persons. Now it was time for another surprise -- this time for the suspects.

"We executed a subpoena on the company where I had worked," Rivera said. "When I walked in, the people I had worked with looked at me and they were shocked. Here was a guy who they had worked side by side with for several months coming

back as a federal agent. They didn't say anything, but you could see from the expressions on their faces that they were literally stunned."

Word of the roundup spread so quickly that Federal agents didn't even have to go after some of the suspects.

"We had a couple of people who, after they found out that the NCIS and FBI were after them, got scared and turned themselves in," Fallon said.

"Heavy Metal's" impact on the "gray market" stolen goods business was so extensive that it would be unfair to measure it by arrests and recoveries alone, according to the Special Agent in Charge of the NCIS Metropolitan Northeast Field Office.

"We are accustomed to apprehending people for stealing government property," Sotack said. "We have repeatedly done those cases. The difference between those and "Heavy Metal" is that for the first time our efforts were aimed at eliminating the buyers of stolen government property. This resulted in an intangible thwart value that can not be estimated."

### TIME FOR REFLECTION

Although there was still plenty of work left to do getting cases ready for trial, the days following the roundup were like the calm after the storm. It was a time for reflection. It allowed the participants to look back over the past four years and assess what they had done and why it worked.



**GOTCHA!** - NCIS Special Agent Joseph Degnan escorts a handcuffed suspect as Philadelphia police in the background search the area.

For Fallon, the pieces of a much larger puzzle had finally come together.

The puzzle was a series of organizational changes which had begun shortly before the midway point of "Heavy Metal" in which major changes were made throughout the NCIS. Area commands and regions were eliminated, along with a number of middle and upper-level management positions which were more fitted to a military chain of command than a law enforcement agency. Several field elements were combined, while others were eliminated, reducing the number from approximately 200 down to about 160.

Replacing the old structure was a new one based on the field office concept used by virtually every other organization in Federal law enforcement. It worked on the philosophy that "decisions should be made at the level closest to the problem" and that field agents should be able to directly contact case category desk officers without going through several layers of management.

Greeted with caution and some skepticism in the field at first, it gradually became evident that major changes were really taking place. The old roles had finally been reversed. Headquarters now existed to support the field. And it showed in "Heavy Metal."

"This really was a cooperative partnership between Headquarters and the NCIS Resident Agency in Philly," Fallon said. "Special Agent Pilar McMillan along with several other people in the Special Operations Division at Headquarters were integral participants in a real team effort."

"We couldn't have done what we did without their full support," Fallon said emphatically. "This is an example of what you can do with close participation and a full partnership between headquarters and the field."

The performance of all the participating agents was something else Fallon continually reflected upon. And each time he did, he was even more impressed.

"The professionalism of the undercover agents and the control agents who rode this thing out for over three-and-a-half years was absolutely incred-

ible," Fallon said. "It had to be a strain on their families and personal lives."

It was a strain, but in Laing's case it was also a tribute to what can be accomplished when a police officer has the support of his family. For Laing, that support came from his wife, Nicole, and two grown children.

"If you don't have a good marriage, don't go into it (undercover work)," Laing said. "It will put stress on your marriage. But if you have a good one, and a very, very understanding wife who supports you, there is almost nothing you can't handle."

Evidently, the Laings have been able to

"handle" a lot of things very well. They will celebrate their 30th wedding anniversary in the Fall.

#### BACK TO NORMAL

For everyone involved, the past few months have been spent getting back to normal and reacquainting themselves with life back in the office.

Laing would like to do "just one more undercover op...in Italy." But for now, he'll settle for a more conventional routine.

"I still enjoy coming to work," he said. "We have a good group here. So far, coming back here with a suit and tie...it's like a new job."

Of course, now that Laing was no longer working undercover, he was fair game again for all those "old man" jokes. The fact that he holds the No. 1 spot on the NCIS "Plank Owners' List" identifying him as the most senior tenured agent in the organization was enough provocation by itself to unleash the office comedians, but when Laing turned 53 earlier this year, it was "open season." And it began the first day Laing returned to his office at the NCIS Resident Agency in Philadelphia.

"I hadn't seen my office for a number of years," Laing said. "And when I come back, what do I find? They had put a wheel chair behind my desk!"

Life at the NCIS Resident Agency in "Philly" was back to normal.

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***"The professionalism of the undercover agents and the control agents who rode this thing out for over three-and-a-half years was absolutely incredible. It had to be a strain on their families and personal lives."***

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**- Resident Agent in Charge Mark Fallon**

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**THE PRODUCERS** - Special Agents Karl Rodriguez, Charles T. May, Frank Atkinson, Reginald Henderson, and Joseph Hassell initiated, organized and produced the Black History Month Showcase.

## San Diego Field Office, Naval Amphibious Base Produce Black History Showcase

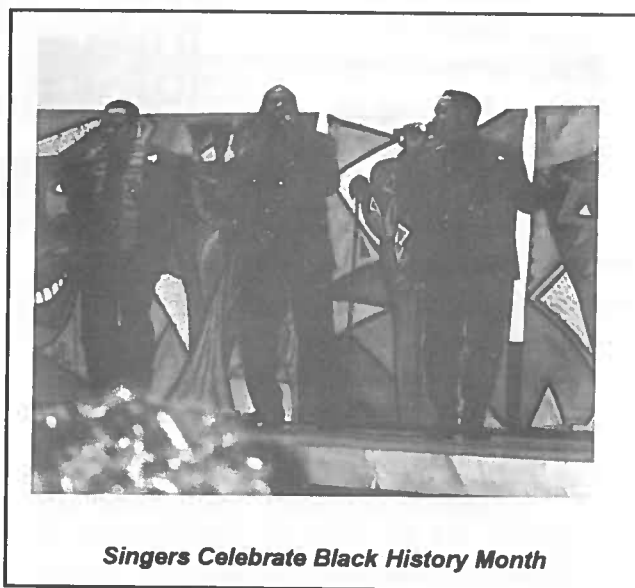
**By Special Agent Charles T. May, Jr.**  
**NCIS Field Office San Diego**

The Naval Criminal Investigative Service (NCIS) Field Office (FO) San Diego, California, in conjunction with the Naval Amphibious Base (NAB) Coronado's Morale, Welfare and Recreation Department produced a successful, first of its kind, variety showcase in support of Black History Month.

The production, entitled "Black History Month Celebration," premiered on the evening of February 25, 1995, at NAB Coronado's "From the Sea" Theater.

The family-oriented showcase featured singers, dancers, poets, comics, rappers, a Gospel choir, and a beauty queen.

"Black History Month Celebration" was initiated, organized and hosted by NCIS Special Agents Frank Atkinson, Joseph Hassel, Reginald Henderson, Charles T. May, Jr., and



**Singers Celebrate Black History Month**

Karl Rodriguez. The event received strong support from Special Agent in Charge Frank Melia and Deputy Special Agent in Charge John Marquette, as well as from Capt. Edward Kelly, USN, Commanding Officer, NAB, Coronado.



# Position on Atlantic Command Staff Benefits Both Navy And NCIS

**By Special Agent Rick Machin**  
**Assistant to the Director**

Beginning in the summer of 1994, just as the Naval Criminal Investigative Service (NCIS) Eastern Regional office was about to be disestablished as part of a reorganization, the NCIS was invited to assign a senior agent to the personal staff of the Commander-in-Chief, U.S. Atlantic Command (CINCUSACOM)/Supreme Allied Commander, Atlantic (SACLANT), North Atlantic Treaty Organization (NATO), Norfolk, Virginia.

As the Regional Director at the old "05HQ" in the Norfolk-Virginia Beach area, I had already set up a fairly regular routine of meeting with the CINC or members of his staff, trying to establish one of those win-win situations where the needs of the NCIS and the commands serviced are both met by recognizing and pursuing common goals.

Now, as it became clear that I was the agent who was going to be assigned full time to the CINC's staff, I had to disconnect from purely NCIS matters to better focus on fulfilling the Memorandum of Understanding (MOU) we began to work out which would officially create the position of Assistant to the CINCUSACOM/SACLANT for Law Enforcement Liaison.

Just figuring out the appropriate title took weeks! Staffing the MOU through both commands took several months. But on January 24, 1995 the agreement was formalized and I became the first NCIS agent to wear this title.

This is a job of wide-ranging duties and opportunities for the NCIS, and I am still climbing a very steep learning curve. Here are some of the things I've learned so far which I'd like to share with everyone in the NCIS.

## THE FIRST DAYS

The timing of my first days at USACOM provided a unique opportunity to observe such a major command at full planning tilt. Everyone there, from the CINC himself right down the line, was engaged in marathon planning for the military intervention in Haiti. These people started their days with briefings before dawn and often never left the building, grabbing a few hours sleep late at night in their offices.

I began attending numerous meetings and the daily operations and intelligence briefings with the CINC. My experience as "a federal investigator who just happens to work for the Navy" (to use Director Roy D. Nedrow's words) was viewed as an immediate asset. I was able to help coordinate the training of the new Haitian National



Police and monitor the Haitian Interim Public Security Force from a professional and human rights perspective.

## A VISIT TO HAITI

Following the October 31, 1994, change of command with General John J. Sheehan, USMC, taking the reins as the new CINCUSACOM/SACLANT, I visited Haiti and provided the command with a firsthand status report on the ever-evolving Haitian police, judicial and prison systems.

This law enforcement viewpoint, provided with no military or political ax to grind, is proving useful to the command and they are beginning, I believe, to view my presence not, as we are unfortunately so often forced to appear, as the bearer of less-than-great news, but as a resource to enhance their full comprehension of some extremely complex problems.

Now, as the level of U.S. military involvement in Haiti declines, much of the frenzied pace in

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***Everyone there, from the CINC himself right down the line, was engaged in marathon planning for the military intervention in Haiti.***

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support of that operation is subsiding. But I am learning that the USACOM plate is always full, even without a major crisis as the main course.

With its expansive mission and geographical area of responsibility covering the continental United States and the Atlantic Ocean, challenges abound. For example, the Cuban migrants in Guantanamo Bay are a primary source of attention.

The command also trains U.S. forces as joint units and provides joint forces to warfighting commanders-in-chief, supports humanitarian disaster relief efforts such as hurricane and forest fire incidents, engages in peacekeeping operations such as the one in Bosnia, and responds to requests for military assistance during civil disturbances in the U.S., its territories and possessions.

#### **OPPORTUNITIES ABOUND**

The command also executes a counterdrug mission through the Joint Interagency Task Force East (formerly JTF-4) in Key West and JTF-6 in El Paso.

"Opportunity" hardly begins to describe it, does it? Everywhere, there are activities, potential problem-solving assignments, not to say

daunting challenges to make a contribution. I especially look for interagency matters, where the military component may utilize the contacts the NCIS has established throughout the varied levels of law enforcement, from local drug enforcement task forces to federal and international efforts of all sorts. Finding the right person in the right agency who holds the answer to a particular question directly affecting the command's mission can be very satisfying.

The job I've described so far would be enough to keep the boredom factor at bay for just about anyone. There's no such thing as a dull day at our nation's largest unified command. But that's really only the beginning of this assignment.

The CINC is dual-hatted; he also serves as NATO's Supreme Allied Commander, Atlantic, which means my scope of duties includes being on that staff as well.

#### **NATO**

The NATO alliance has been the cornerstone of security maintenance through military preparedness and mutual understandings between the member countries. With the advent of the

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***The CINC is dual-hatted; he also serves as NATO's Supreme Allied Commander, Atlantic, which means my scope of duties includes being on that staff as well.***

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post-cold war period, NATO's proper role is under new scrutiny. This concern was expressed repeatedly when I visited Belgium and spoke with numerous officials at NATO Headquarters in Brussels and at SACLANT's counterpart in Europe, SACEUR.

NATO shares with USACOM a basic feature and strength: the ability to maximize resources through the melding of multi-service capabilities and the ability to effectively respond to nontradi-

tional missions. This dual capability may be a key to a meaningful future for the Alliance and it's also where I hope to make a real contribution.

Military services have been busy winning the cold war, leaving scant time for "other than war" taskings. With a new interest in peacekeeping, counter-terrorism, crisis response, "coercive diplomacy" and other missions with a law enforcement dimension, I may be very fortunate enough to be in the right place at the right time.

The staff at Allied Command Atlantic (ACLANT) has enthusiastically welcomed me aboard and we are beginning to discuss several areas where I can be of help.

### **ADAPTING TO CHANGE**

It's instructive to take a step back as we continue the necessary downsizing of the NCIS and keep our heads up, looking beyond our traditional horizons. With the shrinking of the Naval force structure, we must widen our definitions of how NCIS's superior training, field experience and law enforcement and counterintelligence expertise can be useful and even necessary in a future of changing global commitments.

I hope that by serving on the staff at USACOM and ACLANT I can provide NCIS with a classic win-win opportunity.

### **The Author**

*Richard C. Machin is a native of DeKalb, Illinois. He enlisted in the U.S. Marine Corps in 1966 and served in Vietnam during the 1968 Tet Offensive. At the conclusion of his Marine Corps tour, he returned to Northern Illinois University. After graduation, he joined the Illinois State Police and served as a Trooper until 1973, when he became a Special Agent with the Naval Investigative Service, the predecessor of the Naval Criminal Investigative Service (NCIS).*



**ATD MACHIN**

*Special Agent Machin's field office assignments have been at Great Lakes, Illinois; Okinawa, Japan; Subic Bay, Republic of the Philippines; as the Assistant Special Agent in Charge at Pearl Harbor, Hawaii; as the Special Agent in Charge at the Naval Submarine Base, New London, Connecticut; and as Deputy Director, NCIS Mid-Atlantic Region.*

*His several tours at NCIS Headquarters have included assignments as the Deputy Director of the Criminal Investigations directorate and as Executive Assistant to the Director of NCIS.*

*In July, 1993, Special Agent Machin was appointed as Regional Director of the NCIS Eastern Region and served in that position until August, 1994, when he was appointed as Assistant to the Director of NCIS and Assistant to USACOM / SACLANT for Law Enforcement Liaison.*

*Special Agent Machin is a member of the Senior Executive Service and a 1990 graduate of the Senior Executive Fellows Program at Harvard University.*



## Norfolk Lab Now Responsible For Military Working Dog Drug Training Aids in DoD

By Jo Ann Given, Laboratory Director,  
and Diane Howden, Physical Science Technician  
NCISRFL-Norfolk

On March 3, 1995, the Naval Criminal Investigative Service (NCIS) entered into a Memorandum of Agreement (MOA) in which all responsibilities within the Department of Defense (DoD) associated with the distribution of Military Working Dog (MWD) drug training aids were transferred to the Regional Forensic Laboratory (RFL) at Norfolk, VA.

The MOA was established between NCIS, the Air Force Security Police Agency, the Army Military Police Support Agency and the Commandant of the Marine Corps. This MOA affects all DoD commands and will increase the number of commands serviced by the laboratory from 59 to over 200.

Consolidation of drug distribution was achieved through the supportive efforts and constructive input of each of the Military Services. Representatives from each Service were invited to discuss and plan for the transition of drug distribution from Lackland Air Force Base to NCISRFL-Norfolk in a November 1994 meeting. The meeting resulted in a standard operating procedure instruction and the MOA.

NCIS's drug training aid program is recognized by the Joint Services Military Working Dog Committee as an outstanding success. Essential to this success have been the efforts of individuals assisting with fabricating the training aids. Laboratory personnel, members of the Norfolk Law Enforcement and Physical Security Assistance Team, MWD Section and dog handlers of commands in the Norfolk area have all contributed to maintain an adequate supply of training aids in stock.

Training aids are distributed throughout the world to commands having drug detector dogs and are used by dog handlers to maintain the dog's proficiency.

As part of the Navy's oversight of the drug distribution program, training aids in the field are checked by the commands during semiannual inventories and during the annual assessment by the LEPS Assistance Teams. After about two years, the training aids are returned to the Norfolk lab, retested to ensure that the integrity of the training aids was maintained, and then destroyed.

NCIS began manufacturing training aids for the Navy MWD's in 1982. Two key NCIS employees involved in the early stages of the MWD program were Special Agent Bruce Given of the Technical Services Department and MA1 Gregory Washington from the Physical Security Programs Department.

From the beginning, NCIS had to address several problems. Foremost among them was finding a suitable container to house the drug that would:

- 1) permit ventilation of the drug odor required for training the drug detector dogs;
- 2) be free of secondary odors that could interfere with the dog's ability to smell the drug contents;
- 3) be secured properly to maintain integrity of the controlled substance;
- 4) have the durability to withstand the rigors of canine training;
- 5) and be inexpensive;

There were 870 training aids made and distributed during the first year of operation. In 1983 the program was transferred to the Norfolk and Hawaii laboratories. The Hawaii lab continued to provide MWD drug distribution support until being disestablished in 1992. Since then, the Norfolk lab has had complete responsibility for the Navy's MWD drug distribution program.

Drug packaging and distribution has evolved since the early days of the program. Today heroin, cocaine, hashish and methamphetamine are packaged and distributed in sealed vendor-manufactured cans. Marijuana is packaged in small canvas bags.

The Navy currently has over 1,200 training aids in the field. Half these aids are returned yearly to NCISRFL-Norfolk for analysis and replacement by Diane Howden, a Physical Science Technician at the Norfolk lab.

An anticipated 3,600 training aids are expected yearly for analysis and replacement once the DoD program is fully serviced by the laboratory. To manage the increased workload, efforts are underway to hire two additional technicians.

In the spirit of inter-service cooperation, the NCIS Laboratory is looking forward to being a supportive and proactive participant in the continuing DoD effort for a drug-free military.



## SPECIAL AGENTS IN CORPUS CHRISTI ARE PROACTIVE IN COMMUNITY AFFAIRS

By Special Agent Cecil L. Norton  
Resident Agent in Charge  
NCISRA Corpus Christi

Hostage situations... barricaded gunmen... suicide threats... fleeing felons... incidents like these are on the increase in our society and could happen anytime and anywhere.

In response to these threats, the Naval Criminal Investigative Service (NCIS) Resident Agency (RA) Corpus Christi, in cooperation with the NCIS Training Department, has developed and presented a course of instruction entitled "Perimeter Techniques."

The course is designed to increase the skill level of those security personnel responsible for responding to and containing crisis situations. It combines classroom instruction with practical exercises and presents officer survival techniques with tactical teamwork concepts.

The course is not designed to provide special weapons and tactics (SWAT) capabilities to base police personnel, but does strive to make the attendees



**"PERIMETER TECHNIQUES"** - Special Agent David Anderson provides instruction to base security members during practical exercises. (Photo by HM2 Louis Curtis)

better trained to perform their role of establishing an inner perimeter to contain a crisis situation.

No matter what military, Federal, state or local law enforcement tactical support a Navy or Marine Corps facility has on line, it still takes time for the tactical team to respond.

In the interim, which could be anywhere from one to three hours, base security personnel are tasked with containing the situation, and assuring that innocent bystanders, hostages,

law enforcement personnel and the suspect, remain unharmed.

Many principles and techniques used by tactical teams can be used by security personnel to effectively accomplish their containment mission.

The course was designed and has been presented by Special Agent David J. Anderson. Special Agent Anderson, formerly a sergeant and SWAT team leader with the Pinellas County Sheriff's Office, in the Tampa Bay, Florida, area, has extensive experience in actual crisis and high risk situations.



As a certified police instructor for the state of Florida, Special Agent Anderson has provided SWAT tactical instruction at state certified SWAT schools, has provided officer survival instruction, and has lead tactical teams in national SWAT competitions.

In September of 1994, Naval Air Station Corpus Christi security personnel were provided with two sessions of instruction.

In October, 1994, members of the Kingsville Police Department and the Kleberg County Sheriff's Office attended the NCIS instruction presented at Naval Air Station Kingsville.

The course will soon be presented at Naval Station Ingleside, Texas, with representatives from the San Patricio County Sheriff's Office and the Ingleside Police Department scheduled to attend. Response to the training by naval and civilian participants has been outstanding.

### **OTHER COMMUNITY INVOLVEMENT**

During 1994, the Naval Criminal Investigative Service (NCIS) Resident Agency at Corpus Christi provided a variety of liaison activities for local Texas communities.

Special Agents Larry Lee (Kingsville) along with Diana Benson and Harry Richardson (San Antonio) manned an NCIS booth at the 1994 Texas Sheriff's Association Annual Convention in Austin. As many of the sheriffs were unaware of

the services provided by NCIS, the agents spent a lot of their time explaining how NCIS could be of assistance in both criminal and noncriminal matters.

### **RETIRED AGENT NOW SHERIFF**

A highlight of the convention was a visit by Sheriff Joe Nichols of the Cooke County Sheriff's Department. Having spent more than 20 years with NCIS, Sheriff Nichols is better known as "Special Agent" Joe Nichols. Following his retirement, Joe was "cajoled" into running for sheriff of Cooke County, TX, a position he has served in for the past several

years.

### **AGENTS LECTURE AT TEXAS A&M**

Special Agents Mike Chimarys (Houston) and Don Goates (Corpus Christi) were guest lecturers at Texas A&M University and spoke on the issues surrounding victims of child sexual assault.

Special Agent Chimarys, a Ph.D., also lectured at the Texas State Polygraph Association Annual Seminar on the topic of child sexual abuse investigations.

Special Agent Chimarys continues his involvement with the polygraph community and this lecture helped many examiners fulfill the requirement for



**SHERIFF "SPECIAL AGENT" - Retired NCIS Special Agent and current Cooke County, Texas, Sheriff Joe Nichols stands between NCIS Special Agents Diana Benson and Larry Lee.**

*(Photo by Special Agent Harry Richardson)*

continuing legal education needed by the State of Texas Polygraph Examiners.

### **HELPING CHILDREN**

Special Agent Kevin Gates (Corpus Christi) sponsored a "Shadow Program" student from the Corpus Christi Independent School District. The Shadow Program is designed to

encourage underprivileged children to continue their education and pursue professional careers. A local 14 year old boy was taught various aspects of the NCIS recruitment process, training and worldwide missions.

In other community involvement, Special Agents Gates and Goates fingerprinted four

classes of kindergarten students at a local elementary school. Eighty-five children were fingerprinted using the Department of Navy's Ident-A-Kid brochures, which were then provided to their parents as a measure of child safety through identification.

## **Threat Of Hurricane Doesn't Stop Event Planned By Navy And NCISRA Kings Bay**

During the past summer, the Naval Criminal Investigative Service (NCIS) Resident Agency (RA) Kings Bay, Georgia, received a request from the Georgia Bureau of Investigation (GBI) and the Georgia State Patrol (GSP) for a tour of a ballistic missile submarine.

In response, a tour was set up through Rear Adm. Winford G. Ellis, USN, Commander, Submarine Group Ten and schedule for the evening of November 16, 1994. The tour included a night time ride on a submarine.

Those invited included GBI Director Buddy Nix, his associate directors and two GBI special agents in charge; District Attorney Darrell Wilson; representatives from the Federal Bureau of Investigation (FBI) offices in Savannah and Brunswick; and select GBI and GSP officials from Atlanta and other areas of Georgia.

On the evening of November 15, 1994, NCISRA Kings Bay Resident Agent in Charge J. A. Whitacre hosted a reception at his home for the invitees and senior naval officers, including officers from the ballistic missile submarine U.S.S. West Virginia.

As what turned out to be an enjoyable evening drew to a close, it was learned that a hurricane was moving into the area. Despite the stormy weather, Navy officers said that they could still reach the submarine after a one-hour



***LIAISON PARTY - Shown from left to right are FBI Special Agent Tony Alig, GBI Special Agent in Charge Guy Ellis, GBI Special Agent Jim Covington, District Attorney Darrell Wilson, and NCIS Resident Agent in Charge J.A. Whitacre, who hosted the event in his home.***

tug ride, but that seas in the channel were 10 to 12 feet high and they might have to stay on the submarine three or four days.

All agreed it would be best to cancel the trip.

The following day, Submarine Group Ten provided an excellent tour consisting of training in simulators, a briefing on the Trident Mission and the role of Naval Submarine Base Kings Bay, lunch in Rear Adm. Ellis's wardroom, and a tour of a pierside ballistic missile submarine.



## Davis v. U.S.

# Court Rules That Law Enforcement Officers Need Not Clarify A Suspect's Ambiguous Requests For Counsel

By Lt. Laurence M. Zieff, JAGC, USNR  
NCIS General Counsel's Office

In the recent case of *Davis v. U.S.*,<sup>1</sup> the United States Supreme Court ratified an NCIS interrogation that continued despite the fact that during the session the suspect stated, "Maybe I should talk to a lawyer."<sup>2</sup>

The Court found that this statement did not amount to a request for an attorney, and held that "if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable [police] officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, [we] do not require the cessation of questioning."<sup>3</sup>

The Court reiterated, however that if the request for counsel is "sufficiently clear that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney," it must be honored.<sup>4</sup>

Although lower federal courts, including military courts-martial,<sup>5</sup> cannot stray from the Supreme Court's ruling in *Davis*, state courts are obligated only to provide the *minimum* protection required by the U.S. Constitution. They are free to afford *additional* safeguards to their citizens.

### HOW DAVIS IS BEING APPLIED

This article will survey the progeny of *Davis*. The cases discussed are illustrative of how *Davis* is being applied by the courts of various jurisdictions. The Supreme Court has acknowledged that "it is police officers who must decide whether or not they can question a suspect. . . with the threat of suppression if they guess wrong."<sup>6</sup>

It is imperative, therefore, that NCIS Special Agents have some familiarity with how *Davis* is being interpreted by the nation's courts.

### FEDERAL COURTS:

#### The U.S. Court of Appeals for the Third Circuit

Recently, the U.S. Court of Appeals for the 3rd Circuit considered the case of a carjacker who sought to suppress statements he made during an interrogation, claiming that his right to counsel was violated by police.<sup>7</sup>

During the course of his interrogation, police recited his *Miranda* warnings three separate times.<sup>8</sup> At one point, the suspect said, "It would be nice to have an attorney present." The comment was disregarded by the interrogators.

The court held that the suspect's reference to counsel was even more ambiguous than in *Davis*, and therefore, the police were justified in continuing the interrogation. Everything he revealed to police during his interrogation was admitted in evidence.

#### The U.S. Court of Appeals for the Seventh Circuit

In *Lord v. Duckworth*,<sup>9</sup> the U.S. Court of Appeals for the 7th Circuit, considered the case of a convicted murderer who claimed that his confession should have been suppressed because his request for counsel was ignored.

The interrogation had progressed smoothly before the suspect made any mention of counsel. He had already made a lengthy confession and had agreed to assist the police in locating his victim. However, he stopped at one point and asked, "I can't afford a lawyer, but is there any way I can get one?" His interrogator replied, "Yeah." The suspect then changed the subject, and the interrogation proceeded.

The court was called upon to decide whether the suspect invoked his right to counsel, such that the interrogation was in violation of this right. They compared cases where suspects were determined to have made unequivocal requests for counsel, requiring the police to cease their questioning until a lawyer was provided or the suspect initiated further question-

ing. The following unequivocal statements were examined:

- "I think I should call my lawyer."<sup>10</sup>
- "I have to get me a good lawyer, man. Can I make a phone call?"<sup>11</sup>
- "Can I talk to a lawyer? At this point, I think maybe you're looking at me as a suspect, and I should talk to a lawyer. Are you looking at me as a suspect?"<sup>12</sup>

The court found that in contrast to these examples, the comment in the present case did not imply a present desire to consult with an attorney. Therefore, the interrogation was proper. In reaching this determination, the court carefully considered the circumstances in which the statement was made. The suspect's earlier confession and agreement to help the police, created a reasonable impression that he was merely planning on obtaining a lawyer at some time in the future.

#### **The U.S. Court of Appeals for the Eleventh Circuit**

In a case from the 11th Circuit, a 15 year old boy, Coleman, was convicted of strangling his 10 year old sister to death.<sup>13</sup> During his interrogation police were aware that a public defender was enroute to the police station, even though the boy had not actually asked for a lawyer.

The public defender had asked the police over the telephone to cease their interrogation until he had arrived. The police advised Coleman that the public defender was coming to talk with him and that he had asked them to stop the interrogation. They then asked Coleman if he wanted to proceed with the interview anyway, to which he replied, "I don't know. But if [the public defender] said to stop it, I don't want to do what he said not to do." The police believed that Coleman did not want to terminate the session, and continued the interview. Coleman, in turn, made incriminating statements which were used against him at trial.

On appeal, the court analyzed whether the constitutional right to remain silent had been invoked by Coleman. This issue is distinct from that in *Davis*. The court recognized that although the Supreme Court in *Davis* only addressed requests for counsel, it reasoned that the decision should apply equally to ambiguous or equivocal statements regarding the right to remain silent.

The court found that Coleman's statement, which was prefaced by, "I don't know," was inherently

equivocal. The interrogation was ruled proper and Coleman's conviction was upheld.

#### **The U.S. District Court for the District of Kansas**

The 11th Circuit is not alone in its broader reading of *Davis*. In the U.S. District Court for the District of Kansas, *Davis* was also applied to the right to remain silent.<sup>14</sup> Here, a suspected drug dealer, Sanchez, was detained and interrogated by police. After being read his rights, Sanchez stated, "I can't say nothing." The police however continued interrogating him.

At trial, Sanchez claimed that his statement was an invocation of his right to remain silent, and all further questioning was improper. The interrogating officer testified that he thought Sanchez was merely communicating his fear that if he assisted the police, there would be reprisals against him from fellow drug dealers.

The court was convinced that given the unclear nature of his statement and the surrounding circumstances, Sanchez had not clearly exercised his right to remain silent, and further interrogation was permissible.

#### **The U.S. Court of Appeals for the Armed Forces**

As a federal court, the Court of Appeals for the Armed Forces is bound by decisions of the Supreme Court. In *U.S. v. Morgan*,<sup>15</sup> the court had the opportunity to apply *Davis*.

The court found that a rape suspect who asked Air Force investigators during his interrogation, "Can I still have a lawyer or is it too late for that?" had made an equivocal request for counsel. Accordingly, the interrogators were not obligated to cease their questioning.

#### **STATE COURTS**

At the state level, however, *Davis* is being applied with varied results.

The Hawaii Supreme Court recently ruled that *Davis* set too low a standard.<sup>16</sup> Instead, the court adopted the reasoning of Justice Souter's concurring opinion in *Davis*, and held that the Hawaii Constitution required the police to clarify ambiguous or equivocal requests.<sup>17</sup> Failure by police in Hawaii to ask clarifying questions could result in suppression of evidence in courts there.

It should be noted that the West Virginia Supreme Court has cited Hawaii's "stop-and-clarify" rule with approval, deeming it "more reasonable" than *Davis*.<sup>18</sup> On the other hand, the Arizona Supreme Court has

fully embraced *Davis*; police in that state need not clarify vague statements made by suspects.<sup>19</sup>

## CONCLUSION

It is hoped that this survey of post-*Davis* cases will foster a greater understanding of the law as it applies to interrogations. It was in 1981 that the Supreme Court declared that police officers cannot question a suspect who has *clearly* requested an attorney during a custodial interrogation.<sup>20</sup>

In *Davis*, the Court revisited this rule in light of an NCIS interrogation. The Court observed that the requirement of a clear and unequivocal request for counsel enhances law enforcement by "provid[ing] a *bright line* that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information."<sup>21</sup>

It must be remembered, however, that the Court emphasized that asking clarifying questions when a suspect makes an ambiguous statement, though not legally required, "will often be good police practice . . . [which] protect[s] the rights of the suspect by ensuring that he gets an attorney if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel."<sup>22</sup> Therefore, it could be argued that the Court is suggesting that police err in favor of asking clarifying questions, rather than risk denying a suspect his rights.

The pragmatism of this approach is clear. When police are confronted with an ambiguous or equivocal statement by a suspect, why risk suppression of incriminating evidence when a few clarifying questions could dispel the issue?

With *Davis*, the Court has refocused on "the other side of the *Miranda* equation: the need for effective law enforcement."<sup>23</sup> While the *Miranda* warnings stand as a bulwark against coercive interrogations, the Court refused to expand them into an "irrational obstacle to legitimate police investigative activity."<sup>24</sup> NCIS can pride itself for its role in making this "line a little brighter" for law enforcement officers across the nation.

## Endnotes:

<sup>1</sup> *Davis v. U.S.*, \_U.S.\_, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994).

<sup>2</sup> The Special Agents ceased their substantive questioning of the suspect when he made this remark and clarified whether he in fact wanted a lawyer. After the suspect declined legal counsel, the interrogation proceeded. The

Supreme Court found that this effort to clarify the suspect's ambiguous comment, while "entirely proper," was not legally required. 114 S.Ct. at 2357.

<sup>3</sup> 144 S.Ct. at 2355

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., *United States v. McLaren*, 38 M.J. 112 (CMA 1993); *United States v. Applewhite*, 23 M.J. 196 (1987).

<sup>6</sup> *Id.* at 2356.

<sup>7</sup> *Ledbetter v. Edwards*, 35 F.3d 1062 (6th Cir. 1994).

<sup>8</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>9</sup> *Lord v. Duckworth*, 29 F.3d 1216 (7th Cir. 1994).

<sup>10</sup> *Cannady v. Dugger*, 931 F.2d 752, 755 (11th Cir. 1991).

<sup>11</sup> *Robinson v. Borg*, 918 F.2d 1387, 1391 (9th Cir. 1990).

<sup>12</sup> *Smith v. Endell*, 860 F.2d 1528, 1529 (9th Cir. 1988).

<sup>13</sup> *Coleman v. Singletary*, 30 F.3d 1420 (11th Cir. 1994).

<sup>14</sup> *U.S. v. Sanchez*, 1994 U.S. Dist. LEXIS 16121 (D. Kan. 1994).

<sup>15</sup> *U.S. v. Morgan*, 40 M.J. 389 (CMA 1994).

<sup>16</sup> *State v. Hoey*, 77 Haw. 17, 881 P.2d 504 (Haw. 1994).

<sup>17</sup> Haw. Const. art. I, sec. 10.

<sup>18</sup> *West Virginia v. Farley*, 1994 LEXIS 186 (W.Va. 1994).

<sup>19</sup> *Arizona v. Eastlack*, 883 P.2d 999, 1994 Ariz. LEXIS 124, 177 Ariz. Adv. Rep. 33 (Ariz. 1994) ("I Think I better talk to a lawyer first," was not a clear request for counsel.).

<sup>20</sup> *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981).

<sup>21</sup> 114 S.Ct. at 2356 (emphasis added).

<sup>22</sup> 114 S.Ct. at 2356.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (quoting *Michigan v. Mosley*, 423 U.S. 96, 102, 96 S.Ct. 321, 326, 46 L.Ed.2d 313 (1975)).

## The Author

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## Computer Specialist Fugere Is NCIS Civilian Of The Year

Computer Specialist Thelma Fugere of the Naval Criminal Investigative Service (NCIS) Field Office Mayport, Florida, has been selected as the NCIS 1995 Civilian of the Year.

Fugere became the Mayport Field Office's first field computer specialist on June 1, 1994, and according to Special Agent in Charge Brian Stamper, "She hit the ground running and hasn't stopped since."

After conducting an inventory of all computer hardware and software within the field office, she began a program to upgrade its equipment.

"With her contacts at Head-

quarters and with other field computer personnel, she obtained the equipment and software needed to enhance our operating systems," Stamper said. "She made TDY

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***"She essentially has the 'duty' every day - 365 days a year."***

- SAC Brian Stamper

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(temporary duty) trips to every office, including our two OUTCONUS offices, to make the necessary installations and to

correct broken lines."

After it was learned that funding was not available to install local area networks (LAN) at the Mayport and Jacksonville offices, Fugere solicited assistance from other office personnel. Working under her guidance and supervision, they helped Fugere install the cables for both offices, saving NCIS over \$10,000, according to Stamper.

In addition to providing other computer training to all personnel on a continuous basis, Fugere has also assisted in several high profile investigations where her expertise was critical. "She provided invaluable assistance in retrieving hidden child pornography files from a government and personal computer," Stamper said, adding that she is currently assisting in setting up a computer network and supporting software applications which will be used in a Group One, joint agency fraud operation.

"The scope of her responsibilities has been overwhelming," Stamper continued. "But she has never complained. She is available 24 hours a day and has responded to numerous calls for assistance on weekends, holidays and leave days. She essentially has the 'duty' every day - 365 days a year."



### RETIREMENT CEREMONY

*Shown at left is Special Agent Michael B. Jones, who retired January 3, 1995. At the time of his retirement, he was the Special Agent in Charge of the NCIS Field Office Camp Lejeune, North Carolina.*

*His retirement ceremony was held in Swansboro, North Carolina, and was attended by a large group including both active and retired special agents. Among those who attended the gathering were retired special agents Bob Powers, Bud Aldridge, Gordie Crossman, Joe Brant and Jimmy Jones.*

# Field Office Staff Attorney Becomes Special Assistant To The U.S. Attorney In Hawaii

The Staff Attorney for the Naval Criminal Investigative Service (NCIS) Field Office Hawaii, Lt. Stephen Armato, JAGC, USN, was recently appointed as a Special Assistant to the U.S. Attorney, District of Hawaii.

Mr. Steve Alm, U.S. Attorney for the District of Hawaii, administered the oath of office to Lt. Armato in a ceremony attended by Special Agent Clifford R. Simmen, Special Agent in Charge, NCIS Field Office Hawaii.

Lt. Armato is stationed at the Naval Legal Service Office, Mid-Pacific and assigned as the

Staff Attorney for the NCIS Field Office Hawaii. As the Staff Attorney, Lt. Armato advises the Special Agent in Charge and all other special agents on legal aspects of criminal investigations and

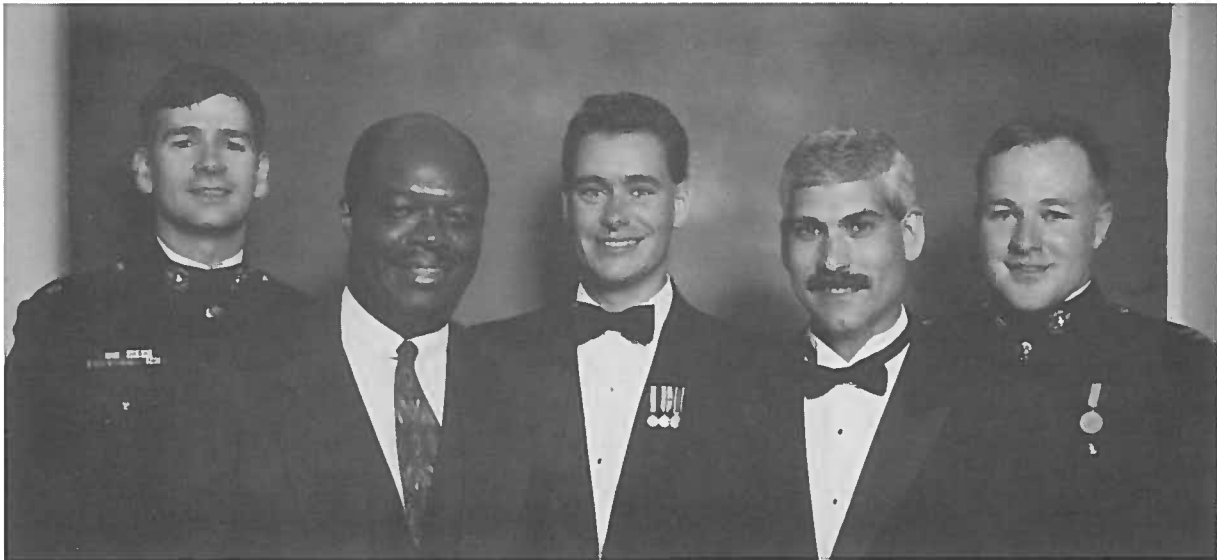
counterintelligence operations.

As the Special Assistant to the U.S. Attorney, Lt. Armato will prosecute offenses committed by civilians on board Naval installations in Hawaii.

## Special Agent Strait Honored By City

Special Agent Murray Strait of the NCIS Field Office Hawaii was honored by the City and County of Honolulu as one of their 1994 "Top Cops" for his role in the investigation and subsequent prosecution of a complex murder case involving a child.

The presentation of the award was made at the Tenth Annual Law Enforcement and Security Appreciation Luncheon held in December, 1994. Councilwoman Rene Mansho presented the certificate to Special Agent Strait.



**USMC BIRTHDAY** - Shown from left to right are Special Agents Neil Hornung, Leon Carroll, Michael Fitzgibbon, Ronald Possanza and Gary Van Orden. Special Agent Van Orden, who is a Marine Reserve officer and the executive officer of Company A(-), 4th Assault Amphibian Battalion, invited some of his fellow agents to the Marine Birthday Celebration in Norfolk, Virginia, which was held on November 10, 1995. Special Agent Carroll is a former Marine officer. Special Agent Fitzgibbon is a lieutenant in the Naval Reserve and drills at the Atlantic Intelligence Command. Special Agent Hornung of the NCIS Resident Agency Quantico, is a former commanding officer of Company A and was an honored guest for the evening. Company A Marines served in Operation Desert Shield and Desert Storm.

# Protective Services In Europe

**Gen. John Shalikasvili, USA,** Chairman of the Joint Chiefs of Staff, left, shakes hands with **Adm. Leighton W. Smith, Commander in Chief, U.S. Naval Forces Europe/Commander in Chief Southern Command (CINCUSNAVEUR / CINCSOUTH).** Looking on is **Adm. Mike Boorda, Chief of Naval Operations.**

The photo was taken during Adm. Smith's visit last year to Croatia and the surrounding area. Due to the potential for hostile action, Adm. Smith was accompanied by a Naval Criminal Investigative Service (NCIS) Protective Service Detail (PSD) composed of special agents and operational representatives assigned in Europe.

In 1994, the eight-person NCIS PSD team conducted 120 security missions for CINCUSNAVEUR / CINCSOUTH.

(Photos by Tech Sgt. Keith Reed, USAF)



**NCIS Special Agent Paul Ciccarelli, left,** gets ready to go out on a PSD for Adm. Smith. The helmet he is holding in his left hand is light blue to indicate that he is part of a United Nations contingent. Above, Adm. Smith and his party tour the Muslim-Serb front lines in Sarajevo, Bosnia-Herzegovina. Just behind Adm. Smith is Special Agent Ciccarelli, the PSD team leader.

*In the photo at right, Adm. Smith is escorted by both his NCIS PSD and host country security agents during a visit to Sofia, Bulgaria, in October 1994.*

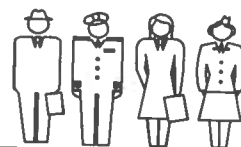
*In the photo below, Adm. Smith and NCIS Operational Representative Tom Burnside go over some last minute details as they await President Bill Clinton's arrival at Capodichino Airport in Naples, Italy in July 1994.*

*In the bottom photo, Adm. Smith poses for a group shot with PSD members and Italian Carabinieri as they wait for President Clinton's arrival.*



*Below, Albanian President Berisha shakes hands with NCIS Operational Representative Mike Hickey, right, during an official visit to Tirane, Albania.*





## Tennessee Reservists Provide Valuable Support To NCIS During Annual Training

**Lt. Mark J. Lawrence**  
NR NCIS 1779

Although many people are familiar with the Naval Reserve and its general mission, a lot of them are not aware of just exactly what it is that reservists do.

In the Naval Criminal Investigative Service (NCIS), reservists play an important role and make significant contributions. One such unit is Naval Reserve Naval Criminal Investigative Service 1779 (NR NCIS 1779) of Memphis, Tennessee.

In the past year, NR NCIS 1779 reserve agents have worked on cases ranging from clearance adjudication to murder. Below is a brief sampling of the training opportunities and "hands on" assistance provided during the past year:

Cmdr. Robert W. Barton, Unit Commanding Officer, spent time at the Atlantic Intelligence Command as an intelligence analyst. He also provided liaison support to the local NCIS area office coordinating the transfer of intelligence information about the building tensions in Haiti.

Lt. Cmdr. Charles Pullen, Unit Executive Officer, did double duty this year. First, he served 17 days at NCISRU La Maddalena, Italy, working side-by-side with agents

of the Defense Investigative Service, participating in several ongoing criminal investigations and gathering data pertaining to a European antiterrorism survey.

His next stop consisted of 33 days additional duty for training at the U.S. Southern Command

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***Both reserve agents conducted numerous foreign counterintelligence and special background investigations, one of which developed a lead that resulted in a full security investigation and administrative discharge.***

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(SOUTHCOM), Counterdrug Division, at Howard Air Force Base, Panama, performing counternarcotics duties both ashore and afloat.

Lt. Cmdr. Gerald Baum attended the NCIS Foreign Counterintelligence Course at NCIS Headquarters in Washington, D.C.

Lt. Cmdr. Darryl Meador and Lt. Mike Stewart worked at NCIS

Keflavik, Iceland, in separate 17 day tours. Both reserve agents conducted numerous foreign counterintelligence (FCI) and special background investigations (SBI), one of which developed a lead that resulted in a full security investigation and administrative discharge.

Additionally, Lt. Cmdr. Meador had a rare opportunity to assist in an accidental death investigation, which included cold water dives for body recovery and scene evaluation.

Lt. Mark Pfaffenroth served as the NCIS Liaison Officer for the D-Day 50th Anniversary ceremonies while attached to the office in London, England. Coordinating with military forces, visiting dignitaries, and local law enforcement personnel, he had the opportunity to work with a wide variety of people and met Secretary of the Navy John Dalton during the assignment.

Lt. Cmdr. Tina Talley and Lt. Mark Lawrence worked a bit closer to home during their annual training supporting NCIS special agents in Memphis. Independently, or in conjunction with ongoing investigations, these officers covered the full spectrum of general criminal investigations. Individual cases included larceny, sexual assault, counterdrug and narcotics, fraud, and murder.



ISC Keith Marley got the opportunity to combine his skills as a professional photographer and graphic designer as he re-wrote and designed the Navy Reserve "Welcome Aboard" package for the Reserve Liaison Office in Washington, DC. He took photographs for the NCIS Bulletin and provided meaningful computer graphics training which was highly beneficial and greatly appreciated.

YN2 Pat Greene manned the NCIS Headquarters Reserve Management Office in Washington, D.C. as the only administrative support person available during a summer vacation period. She provided assistance to the Reserve Foreign Counterintelligence course in both administrative

and instructional capacities.

IS2 Terry Lake took her computer saavy overseas in support of NCIS special agents in

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***IS2 Terry Lake  
took her computer  
saavy overseas in  
support of NCIS  
special agents in  
Rota, Spain.***

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Rota, Spain. She mastered the NCIS Standard System Documentation Program and was able to clear an extensive administrative backlog.

PN2 Tina Leake was put to the test of a professional personnelman as she worked in support of both NCIS Naples, Italy and a local personnel and reserve support department fleet detachment.

Obviously, these were not exactly a routine set of annual training tours!

The personnel of NR NCIS 1779 would like to express their thanks to each of these annual training sites for the training and "real world" application opportunities provided. This unique combination of hands-on instruction and application truly enhance our ability as ready reservists to perform our assigned duties "upon arrival" when called.



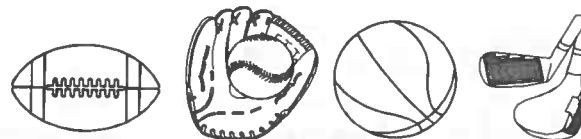
## **SPECIAL CEREMONIES**

*Lt. Cmdr. Anthony F. Violante, USNR retired from the U.S. Naval Reserve on September 1, 1994, in a ceremony held onboard the battleship U.S.S. Massachusetts at Fall River, Massachusetts..*

*At left, Capt. Lance Arnold, USNR, who is also the Special Agent in Charge of the NCIS New England Field Office, presents Lt. Cmdr. Violante with a shadow box containing his reserve badge and credentials, which he had for over nine years.*

*At the same ceremony a change of command was held during which Capt. Arnold, was relieved as Reserve Intelligence Area Commander, Area Nineteen.*

*The change of command ceremony was attended by a special guest and friend of Capt. Arnold's, retired Rear Adm. Donald T. Corrigan, the former Commander of Readiness Command One and the father of NCIS Special Agent Mike Corrigan, who is now assigned to the Counterintelligence Directorate at NCIS Headquarters.*



## Despite Injuries, NCIS Team Makes Good Showing In Oahu Perimeter Relay Race

Who would have thought...

Well, maybe we should start at the beginning.

On February 11 and 12, 1995, members of the Naval Criminal Investigative Service (NCIS) Field Office Hawaii participated in the 24th annual "Oahu Perimeter Relay Race".

At first, the fact that seven able-bodied men would be running around the island of Oahu sounded pretty macho.

But once the team realized it encompassed 134 miles, starting and ending in the shadow of Diamond Head, and spending the night in a van with the rest of the team...well, let's just say everyone remained friends at the end.

The race consisted of seven runners and 35 legs, with the NCISFO Hawaii team starting their participation in the race at 9 p.m. on February 11.

For those of you who have never been assigned to Hawaii, Oahu is pretty civilized until you venture past Makapuu Point on the windward side, through the north shore section (where the "people that time forgot" seem to congregate), on up through Kaena Point, which has no paved roads nor vehicular traffic. (The support team had to drop the runner off on the northside, double back and over Kolekole Pass and meet the guy on the west shore).

Plus there were moments of terror, for instance, when one of the runners was confronted with some stray cows...or at least he thought they were cows. Much of the area had a lot of local flavor, with the runners thinking of all the wild boar stories they had heard since they arrived.

The NCIS Field Office Hawaii team finished the race at 3:47 p.m. on February 12, after 18:47:43 on the road.

A total of 93 teams competed and finished the race. Our guys finished in 18th place, averaging 8:26 per mile. Assorted injuries included a pulled achilles tendon, strained hip muscle, abdominal stitch, and a bad case of dehydration -- with all the trimmings. The



**TEAMMATES** - Members of the NCISFO Hawaii relay race team included, from left to right: Special Agent Brian Richards; Walt Duncanson of the Naval Station Pearl Harbor Security Department; Special Agent in Charge Clifford Simmen; Special Agent Mike Monroe; and U.S. Customs Service Special Agent Mike Pak.

(Photo by Teresa Richards)

team consisted of Special Agents Cliff Simmen, Mike Monroe, Greg Bachman, Brian Richards and Bruce Warshawsky (all from NCISFO Hawaii), U.S. Customs Service Special Agent Mike Pak and Detective Walt Duncanson of the Naval Station Pearl Harbor Security Department.

Runners' medals were presented at a dinner honoring the support teams on February 22. Support team members were Special Agents Wanda Simmen, Murray Strait, Ed Winslow, Rob Braatz, Caroline Braatz, Valerie Cernosek, Janice MacNeil, and Mrs. Teresa Richards.

## NCIS Liaison Tourney

# Golf Season Never Ends In Hawaii

**Special Agent Rod Budd**  
**NCISRA Kanohe Bay, and**  
**Special Agent Troy Noble**  
**NCISRA Pearl Harbor**

Just when most of the NCIS world is getting ready for a long cold winter, NCISFO Hawaii hosted its 1994 version of what has become an annual liaison golf tournament.

Agents and officers from the Honolulu Police Department (HPD), the U.S. Air Force Office of Special Investigations (AFOSI), the Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Postal Inspection Service (USPIS), the United States Marshals Service and U.S. Army Criminal Investigations Command (Army CID) participated in the Second Annual NCIS Liaison Golf Tournament.

The tournament was held on October 25th at the Navy-Marine Golf Course, near Pearl Harbor. As usual, the weather cooperated with an 85 degree, sunshiny day with a gentle trade wind.

The format was a "Peoria" handicap system which gave everybody, regardless of their ability, an opportunity to take home one of the many trophies.

When all was said and done, AFOSI Special Agent Ernie Joy from Hickam Air Force Base, came out the overall winner with a low gross score of 75. Special Agent Joy also won one of the "closest-to-the-pin" awards.

First place low net went to Army CID Special Agent Lee Tuitele, who shot a gross score of 88, net 61. Special Agent Tuitele also won the "long drive" contest. SA Tom Lindsey, ATF, Honolulu, placed second with 92, net 65.

NCIS Special Agent Valerie Cernosek of the Hawaii Field Office shot a blistering 101, but won third place with a net score of 65. Keith Perry, HPD, placed fourth and Bob Murray, Army CID, came in fifth. The second "closest to the pin" contest was won by Special Agent Dave Sage, Army CID.

One special honor was awarded this day, a prize for the individual with the highest gross score. This year's award went to Special Agent Michael Chapman, NCIS Field Office Hawaii Polygraph Site. Mike was awarded a can of tennis balls for his efforts. No one really knows how bad Mike played, he claims to have lost his scorecard. Mike took the tennis balls and the "hint" in good spirit and threatened to return next year.



**TROPHY WINNERS - NCIS Special Agent Troy Noble presents trophies to Army CID Special Agent Lee Tuitele (top photo) the low net score; AFOSI Special Agent Ernie Joy (center photo) for the low gross score; and HPD Officer Keith Perry, who finished in fourth place.**

*(Photos by Special Agent Rod Budd)*



**CELEBRITY VISITOR - Actor Steven F. Seagal and producer Jules Nasso visited NCIS Headquarters as the guests of Director Roy D. Nedrow. In the photo above, Seagal displays a plaque presented to him by Director Nedrow.**

**At right, Director Nedrow discusses a point of interest with Seagal and Nasso.**

**(Photos by Gary M. Comerford)**



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**Address Correction Requested**