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U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

GENERAL ADMINISTRATION

04SEP08

FROM: 0000

GEN: 00-0012

TO: DIST

SUBJ: POLICY CHANGE REGARDING RECORDING OF INTERROGATIONS

REFERENCE

- (A) NCIS-3, Chapter 14 (Interviews and Interrogations)/Aug07
- (B) NCIS-3, Chapter 36 (Electronic Interceptions and Electronic Investigative Aids)/Dec06
- (C) NCIS-3, Chapter 5 (Evidence)/Oct07
- (D) NCIS-3, Chapter 6 (Investigative Theory and Procedures)/Dec06
- (E) NCIS-3, Chapter 34 (Sex Offenses)/Sep07

1. The information contained herein will be incorporated into a forthcoming change to reference (a). Additional policy changes will be made to refs (b) and (c) relating to recording equipment and statement taking. The following policy changes amend ref (a), Section 14-9.18, Recorded Interviews and Interrogations.

2. The recording of interrogations by overt video or audio means within the confines of an NCIS facility having the technical capabilities for such recordings shall be accomplished in all investigations involving crimes of violence. Crimes of violence include homicide, sexual assault, aggravated assault, robbery, and crimes involving weapons. A decision not to record may be made by the Special Agent-in-Charge or his/her supervisory designee when circumstances of investigative environment dictate that recording would be counterproductive or otherwise impede the interrogation.

3. Supervisory engagement regarding the use of audio or video recording of interrogations is required and shall be documented in the case activity record (CAR). Factors for consideration of whether to record an interrogation are provided below in Appendix (1). The factors listed in Appendix (1) should not be considered all inclusive or restrictive.

4. NCIS components shall adhere to the below delineated procedures to ensure uniformity of policy administration. It is envisioned that all NCIS components will eventually become technically capable to record interrogations consistent with the guidance provided below:

a. All NCIS field components shall post a warning sign at each entrance to rooms being used for interrogations informing those who enter that they are subject to electronic monitoring. The signs shall read "ROOM SUBJECT TO AUDIO/VIDEO RECORDING AT ALL TIMES". The signs shall measure 8.5" by 11" at minimum and shall be clearly visible to anyone entering the room. Signs shall be produced locally; a sample sign titled "Recording Interrogations Sign" is posted on the NCISnet under Downloads, Forms, then Investigative

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Forms. Overseas components may post an additional sign in the native language but must ensure the translation is consistent with the meaning of the above verbiage. If a CONUS office is located in an area where a foreign language is widely spoken, an additional sign may be posted in that language.

b. No additional written or verbal notification is needed prior to conducting an interrogation.

c. If the person being interrogated objects to being recorded, the recording equipment shall be immediately turned off and remain off throughout the interrogation and statement taking process.

d. Recording equipment shall be turned off when a person is conferring with his/her lawyer or with a chaplain. It should be noted on the recording the time the recorder is turned off and restarted.

e. The entire session, except for when a person is conferring with his/her lawyer or with a chaplain, shall be recorded from the time the person being interrogated enters the room until the time he/she departs, to include the statement taking process.

f. Even if a subject has made a recorded statement, the subject shall be afforded the opportunity to provide a written statement in his/her own handwriting or prepared for him/her by an agent.

g. The master recording shall be treated as evidence consistent with NCIS policy on evidence processing and a log of copies made shall be maintained in the case file.

5. Whenever an interview/interrogation is electronically recorded, appropriate annotation of that fact shall be documented in an Investigative Action (IA) and included in the reporting Report of Investigation (ROI). The ROI shall also distinguish if the recording was video/audio, or just audio. If the decision is made not to record interrogations relating to crimes of violence, the rationale for that decision (e.g., the office interview room not equipped to record) and the identity of the supervisor making that decision shall be annotated in the Case Activity Record (CAR). Situations wherein a person specifically objects to being recorded during an interview/interrogation shall also be reported in the ROI.

6. The master recording shall be maintained as evidence until the case is fully adjudicated including the appeals process. A ROI shall reflect where the recording was placed into evidence, the date and log number of the evidence. A log shall be established to document any reproductions or copies of recordings. The log shall be maintained in the case file and shall reflect the name of the requestor, the date copies were made, and to whom the copies were provided. A copy of the recording shall not be submitted as part of the closed file.

7. Transcription of recorded interrogations is not the responsibility of NCIS.

8. Polygraph examinations conducted in support of criminal or counterintelligence investigations will not be audio/video recorded without prior approval of the Chief, Polygraph Services Division (24B2). Counterintelligence Scope Polygraph examinations are not affected by this change in policy.

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9. Absent exigent or extraordinary circumstances, interrogations of persons involved in crimes of violence shall be conducted with two investigators present, regardless of whether the interrogation is recorded.
10. During joint investigations in which another agency has primary jurisdiction, the other agency's policy supersedes the requirements set forth in this chapter.
11. Agents should consider use of this investigative tool in all investigations.
12. Guidance in ref. (e) regarding the recording of interviews of children remains unchanged.
13. Additional guidance regarding policy changes relating to statement taking is forthcoming. In the interim, policy delineated in refs (c) and (d) remain in effect.
14. POC of this policy change is the Criminal Investigations Directorate, Program Direction Department, NCISHQ Code 23A, DAD Susan Raser at susan.raser@navy.mil.

APPENDIX (1)

Following are factors for consideration by Special Agents-in-Charge or their designees when determining whether to record interrogations. These factors are neither inclusive nor restrictive and are not regulating guidelines. They should not be viewed as a checklist and are not intended to limit supervisory decision-making. They are intended to be thought provoking to assist in the decision making process when considering whether to record an interrogation and are consistent with factors considered by other federal law enforcement agencies:

1. Recording interrogations in non-violent crimes shall be strongly considered in those cases that lack evidence the person being interviewed committed the offense.
2. Whether the purpose of the interrogation is to gather evidence for prosecution, or intelligence for analysis, or both.
3. If prosecution is anticipated, the type and seriousness of the crime, including, in particular, whether the crime has a mental element (e.g., knowledge or intent to defraud), proof of which would be considerably aided by the subject's admission own words.
4. Whether the subject's own words and appearance (in video recordings) would help rebut any doubt about the voluntariness of the statement raised by a person's age, mental state, educational level or understanding of the English language; or is otherwise expected to be an issue at trial, such as to rebut an insanity defense; or perhaps be of value to behavioral analysts.

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5. The preference of the Military Trial Counsel, the U. S. Attorney's Office (USAO) or Federal District Court regarding recorded statements.

6. Local laws and practice - particularly in task force investigations where state prosecution is possible.

7. Whether interrogations with other subjects in the same or related cases have been electronically recorded.

8. The potential to use the subject as a cooperating witness and the value of using his/her own words to elicit his/her cooperation.

9. Practical considerations - such as the expected length of the interrogation; the availability of recording equipment and transcription (and if necessary, translation) services; and the time and available resources required to obtain them.

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