

# Federal Bureau of Investigation

Agency.

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1 **INTRODUCTION**

2 This appeal concerns a negative suitability determination made on 6/30/2009 by  
3 Personnel Security Specialist Abby M. Halle, and the discontinuation of my Special Agent  
4 application on 7/1/2009 by Acting Unit Chief Montchell Brice of the Special Agent Clearance  
5 Unit.

6 I appeal the negative suitability determination and the discontinuation of my application  
7 to the Adjudication Review Board. I request a hearing before the Board.

8 The decisions should be reversed because they are based on false information, which was  
9 reported by a SACU Special Agent who manipulated the process to ensure my disqualification.

10 **CHRONOLOGY**

11	12/2/2008	Special Agent application filed.
12	1/8/2009	Phase I written test.
13	5/1/2009	Phase II interview and written exercise.
14	5/6/2009	Phase II passing results, and Conditional Appointment is made.
15	5/18/2009	SF-86 and Cover Sheet turned in.
16	5/28/2009	Personnel Security Interview.
17	6/9/2009	Polygraph Examination.
18	6/15/2009	Background Investigation initiated.
19	6/25/2009	First contact with Special Agent Clearance Unit.
20	6/30/2009	Last contact with SACU.
21	6/30/2009	Suitability determination made.
22	7/1/2009	Conditional appointment rescinded.

23 **PROBLEM**

24 I was deemed not suitable for employment on the basis of "drug use" for reportedly being  
25 involved in a drug transaction in May 2008.

26 Although I was present in the same house, I was not involved in the transaction of less  
27 than \$100 of marijuana between two friends, and I did not use drugs. The reports of three

1 Special Agents and the Declaration of witness [REDACTED] in support hereof confirm  
2 that I was not involved in the transaction and did not use drugs. On 6/12/2009, the Special  
3 Agent Applicant Unit approved my continued processing despite this incident, confirming its  
4 understanding from my polygraph report that I was not involved in the transaction and did not  
5 use drugs.

6 The problem lies with Special Agent Graham Coder of SACU ("SA Coder"). After  
7 speaking with me on 6/25/2009 and 6/30/2009, SA Coder prepared a FD-302 in which he  
8 represented to the FBI that I said I was involved in various aspects of the May 2008 transaction.  
9 I did not make or adopt the statements that SA Coder attributed to me. Therefore, SA Coder  
10 made false statements to the FBI. He did this apparently because he decided to disqualify me  
11 after I inadvertently laughed at one of his questions and offended him.

12 In addition to making false statements, SA Coder willfully failed to fully investigate the  
13 incident. Specifically, SA Coder chose not to contact the very witnesses he asked for and that  
14 I provided. SA Coder omitted the witnesses' names and information from his FD-302 and the  
15 file, apparently to prevent anyone else from contacting the witnesses to see what they had to say.  
16 After the discontinuation of my application, I contacted the witnesses myself. Both witnesses  
17 stated that I was not involved in the subject transaction and never should have reported it to  
18 the FBI. SA Coder's failure to pursue these leads to their logical conclusion—contacting the  
19 witnesses who were in the best position to judge my "involvement" in the transaction—as well as  
20 his concealment of their identities from the FBI, makes his FD-302 a false investigative record.

21 The FD-302 is highly damaging because it is the basis for an opinion of law by the Office  
22 of General Counsel that I was involved in the drug transaction, that I was acting as an attorney,  
23 and that I acted unethically and with poor judgment. It was this opinion and its basis that were  
24 used to disqualify me.

25 The three Special Agents who (1) reviewed my SF-86, (2) interviewed me on the  
26 subject in the Personnel Security Interview, and (3) conducted my polygraph examination  
27 also filed reports. These three Special Agents contradict SA Coder and report that I was

merely “present” or “accompanied a friend,” without any mention of me being involved in the transaction. Analyst Abby M. Halle omitted these other versions of the facts from her suitability determination, and from her communications with the Office of General Counsel.

Because of these conflicting versions of the facts, it is now up to the Board to decide who to believe. Should the Board believe SA Coder? Or should the Board believe Special Agent [REDACTED], Special Agent [REDACTED] the Special Agent who reviewed my SF-86, witness [REDACTED] and me?

Being present in the same house but not involved when two friends exchange less than \$100 of marijuana is not a violation of the FBI drug policy stated in the manual, OPM suitability guidelines, [REDACTED] or Federal law, or ethical rules controlling attorneys licensed in my State. OGC’s legal opinion was given by an attorney who is not licensed to practice law in [REDACTED] and who is therefore unqualified to judge me under the standards of professional conduct of my State.

Because the suitability determination and discontinuation of my application were based on false information, an incomplete investigation, and a wrong legal opinion, the decisions should be reversed and my application reprocessed by different SACU personnel.

## FACTS

### A. Declaration of [REDACTED]

1. This summarizes an incident that I reported in my SF-86, and what I reported to FBI personnel at the Personnel Security Interview and Polygraph Examination. For additional factual information, please see the Declaration of [REDACTED] at page 17.

2. In May 2008, at the suggestion of my college friend [REDACTED] with whom I was staying for the weekend for [REDACTED], I accompanied [REDACTED] to our mutual friend [REDACTED] house. [REDACTED] intended to obtain a small amount of marijuana (less than \$100) from [REDACTED] and I intended to visit with [REDACTED]. [REDACTED] was not a drug dealer, but he did keep extra marijuana around to share with friends. While on the way over to [REDACTED] place, [REDACTED] lamented [REDACTED] eccentric behavior concerning prices, and I half-jokingly offered [REDACTED] a few tips in negotiating that I had picked

1 up in a recent mediation at work. When we got to [REDACTED] I initially made a few comments  
2 on what [REDACTED] was asking for and what [REDACTED] was willing to pay, but I ended up embarrassing  
3 myself because I know little to nothing about drugs, and I was not taken seriously. I excused  
4 myself and left the room, which is why I used the phrase “I believe” in my SF-86 attachment—I  
5 had no personal knowledge of what [REDACTED] and [REDACTED] agreed to or of any crime that may have  
6 occurred after I left. I did not use any of the marijuana. I did not contribute in any fashion to the  
7 purchase, financially or otherwise.

8 3. In my attempt to be as forthcoming as possible with the FBI and in an abundance  
9 of caution, I reported this incident as being “involved” in a drug transaction when responding to  
10 questions in my SF-86. My original SF-86 attachment is attached as **Exhibit 1**. I later learned  
11 from both [REDACTED] and [REDACTED] that I was wrong about being involved, and I was not involved in  
12 this transaction. Supporting this, even my original attachment stops short of saying I had any  
13 substantive role in the transaction; I was simply there and talking with [REDACTED] and [REDACTED]

#### 14 The SF-86

15 4. The unnamed Special Agent who reviewed my SF-86 shortly after I submitted  
16 it on 5/17/2009 wrote a handwritten sheet of notes, which are attached as **Exhibit 2**. The  
17 Special Agent wrote “In May 2008 Applicant ~~assisted~~ accompanied a roommate [sic] to purchase  
18 marijuana, but did not smoke.” The agent clearly understood the statement, as he crossed out the  
19 word “assisted” on his notes before writing that I merely accompanied my friend [REDACTED]

#### 20 Personnel Security Interview

21 5. The Personnel Security Interviewer, SA [REDACTED] heard substantially the  
22 above information, and she wrote in the PSI Form that I “Accompanied a friend who was buying  
23 marijuana.” This page is attached as **Exhibit 3**.

24 6. Also at the PSI, I filled out the illegal drug use questionnaire, which is attached  
25 as **Exhibit 4**. I answered “no” for the question “Did you ever buy?” I have never purchased  
26 marijuana or any other illegal drugs, or contributed money or otherwise to any other person’s  
27 purchase of marijuana or other illegal drugs.


1 **Polygraph Examination**


2 7. The polygraph examiner, SA [REDACTED] heard all of the above information,  
3 including the key fact that I was not present when any crime occurred, because I had excused  
4 myself and left the room. Under appropriate questioning directed to whether I had “lawyered”  
5 my SF-86 attachment, I explained to SA [REDACTED] that this is why I used the phrase “I believe;”  
6 because I did not have personal knowledge of what happened after I left. SA [REDACTED] wrote in his  
7 report: “Applicant was present in 2008 when a friend purchased less than \$100 of marijuana.”  
8 A Supervisory Special Agent from the Special Agent Applicant Unit appears to have approved  
9 the report and my continued processing, because he/she circled and initialed the “CONTINUE”  
10 directive on 6/12/2009. The report is attached as **Exhibit 5**.

11 **Special Agent Coder**

12 **a. 6/25/2009 Phone Interview**

13 8. On 6/25/2009, I received a phone call from a person who identified himself as  
14 Special Agent Grahm Coder, FBI (“SA Coder”).

15 9. SA Coder stated that he was “temporarily assigned to move the case forward” and  
16 that my background investigation “should be starting soon.” SA Coder explained that his job  
17 was to act as a central repository for information coming in from the field during my background  
18 investigation. SA Coder described the background investigation in a manner that indicated that  
19 SA Coder was somehow in charge of the background investigation. 

20 10. Referring to my SF-86 attachment, SA Coder then asked whether I had used  
21 any of the marijuana purchased by my friend [REDACTED] and whether I contributed any money to  
22 the purchase. I clearly stated that I did not use any of the marijuana or contribute money to the  
23 purchase. SA Coder then attempted to get me to change my answer by pretending to be my  
24 friend. He stated “it’s ok...you can tell me” in a sympathetic voice. I cannot change the truth  
25 and I did not change my answer. I did not use any of the marijuana or contribute to its purchase,  
26 and I am in compliance with the FBI’s policy on drug use stated on its web page and in the FBI  
27 manual. 

1 11. SA Coder then asked substantially the following question:

2 Q. “Were you involved in the decision to go to the house to buy the drugs?”

3 12. I reflexively laughed at his question. This is like asking someone, “when did  
4 you start beating your spouse?” There is no reasonable answer. I have heard, read, and/or  
5 responded to hundreds of these types of deliberately misleading questions or statements in my  
6 career. In this case, SA Coder’s question inappropriately combined (1) my decision to go “along  
7 for the ride” to visit [REDACTED] with (2) [REDACTED]’s decisions to go to the house and to buy the less than  
8 \$100 of marijuana. If I answered “yes,” it would later be claimed that I had decided to buy the  
9 marijuana. If I answered “no,” I would have denied deciding to go along to the house, which  
10 would not be true. This is why I did not answer the question.

11 13. Despite my not answering his question, SA Coder states in his FD-302 “[h]e said  
12 that he was involved in the decision to travel to the house to buy the drugs . . . .” This is a false  
13 statement because I never answered his question, and I said nothing to that effect.

14 14. The statement that I “traveled with a friend to another friend’s house for the  
15 purpose of buying marijuana” is also a false statement, because my purpose was to visit with  
16 [REDACTED] not buy marijuana. This is clearly indicated in my SF-86.

17 15. After I responded to SA Coder’s initial question with a mild laugh, he withdrew  
18 the question. Instead of asking me questions that would establish the propositions stated in his  
19 FD-302, he said “let’s do it this way” and he proceeded to read aloud from my SF-86 attachment,  
20 and then ask me whether it was true. What could I say? That I filed a false statement with  
21 my application? Of course my SF-86 statement is true—but it stops short of admitting any  
22 substantive role in the transaction. For example, “[REDACTED] didn’t take [my comments] seriously  
23 because I knew nothing about drugs or their prices, or how to handle a drug purchase.” SA  
24 Coder did not ask me follow up questions after he read my statement to me, so I had no chance  
25 to add more information.

26 16. SA Coder did not read aloud to me the statements in his FD-302, and I did not  
27 adopt SA Coder’s statements as my own.



1           17.     SA Coder did not ask me whether I assisted in negotiating the price of the  
2 marijuana purchase between my friends. I did not tell him that I assisted in negotiating the price  
3 of the marijuana purchase between my friends.

4           18.     SA Coder did not ask me whether I acted as a “representative” of the buyer of the  
5 marijuana to the seller. I did not tell him that I acted as a representative of the buyer to the seller.

6           19.     SA Coder did not ask me whether I was involved in the negotiation of the  
7 purchase price. I did not tell him that I was involved in the negotiation of the purchase price.

8           20.     Instead of asking me these questions, SA Coder read to me from my own written  
9 statement. Other than me denying using any of the marijuana or contributing money, no new  
10 information about the May 2008 incident was developed in our phone conversations. Essentially,  
11 with his FD-302 SA Coder has changed my SF-86 attachment to his own version of the facts, in  
12 accordance with his apparent bias and goal of disqualifying me.

13           21.     Had SA Coder actually asked me the questions that would establish the facts  
14 stated in his FD-302, I would have answered “no” to each of them. Please see my Supplemental  
15 Declaration at the end of this appeal where I finally get a chance to answer the questions that  
16 were not asked.

17           22.     I did not assist in the negotiation of the price of the marijuana purchase between  
18 my friends. I did not act as an attorney or representative for either party in this transaction.

19           23.     I had advised [REDACTED] on the way over to [REDACTED]’s house that I could not act as his  
20 attorney, because an attorney may not advise a violation of law. We both understood that. Under  
21 [REDACTED] law, an attorney-client relationship is only created by the agreement of both parties.  
22 No attorney-client relationship was created here, and this is one reason I did not assert the  
23 attorney-client privilege in response to Question 23 of the SF-86.

24           24.     I have prepared my own FD-302 of the 6/25/2009 conversation with SA Coder,  
25 which is attached as Exhibit 6. This is what I would have written if I had been in SA Coder’s  
26 position.

27           25.     I did not check with [REDACTED] or [REDACTED] before answering “yes” to Question 23 of the

SF-86 regarding involvement in the illegal handling, purchase, delivery, etc. of drugs. I did not check with them first for two reasons. One, it was the most honest thing to do to just report it and let the FBI sort it out. Two, I didn't want it to be claimed that I had ever asked my friends to "cover" for me. If I didn't contact them, no one could say I asked them to cover for me.

26. Both [REDACTED] and [REDACTED] advised me on two separate occasions in July 2009 and November 2009 that I was not involved, that I should not have reported that I was involved, and that they did not consider me to be involved. [REDACTED] also advised me that he had a Medical Marijuana license at the time of the incident. I do not know what the terms of [REDACTED]'s license are; whatever they are, he legally obtained his marijuana under [REDACTED].

27. [REDACTED] and [REDACTED] have advised that they are available any time to set the record straight. Their contact information follows:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

28. On 6/25/2009, SA Coder asked me for both [REDACTED] and [REDACTED] 's contact information. I told him that [REDACTED]'s information was in my SF-86 roommate attachment, and that I would have to look up [REDACTED]'s. SA Coder put me on hold for a few moments, presumably to confirm this with Analyst Halle. Then SA Coder came back on and told me that this was fine as to [REDACTED] but that we would "hold off" on [REDACTED]'s information at that time.





29. At the time of the 6/25/2009 conversation, I could not figure out why SA Coder only read my written statement to me without asking further questions. It seemed like a pointless conversation at the time.

30. In an email message to SA Coder with follow up information, I suggested that he check with the polygraph examiner or look at his report, because my Attachment 23 and the incident were discussed in detail at the polygraph. My email is attached as part of Exhibit 7. I didn't say more because I know that as an applicant I am not supposed to tell a Special Agent

1 how to do his job. I did not anticipate that SA Coder would do what he did. 

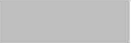
2 **b. 6/30/2009 Phone Interview**

3 31. I had two separate phone conversations with Special Agent Coder. One on  
4 6/25/2009, and one on 6/30/2009. The 6/30/2009 conversation included information on software  
5 downloading I did when I was a minor and in college, which is a paragraph on the first page of  
6 the FD-302. For some reason, the FD-302 is backdated to 6/25/2009 even though it reports two  
7 separate interviews about different subjects on different days. The FD-302 also inaccurately  
8 states that the investigation was telephonic when much of the FD-302 is from my emails.

9 32. On 6/30/2009, SA Coder contacted me and said that it turned out he did need  
10 's contact information. So I sent an email message with my friend 's contact information.  
11 Neither this email message nor any reference to 's information appear in SA Coder's FD-302   
12 or the file.

13 33. The key take-home point here is that I never told SA Coder any of the statements  
14 attributed to me in the first paragraph on page two of his FD-302. He read my own statements to  
15 me, did not ask me the questions that his FD-302 implies were asked, and made up his own facts.  
16 SA Coder's version of the facts appears to be what was used to disqualify me.

17 **Other False Statements in the FD-302**

18 34. "He stated that on his 2007 tax return, he neglected to pay his state income tax  
19 for  He stated that he did this because he forgot that he was obligated to pay." I never  
20 told SA Coder that I forgot that I was obligated to pay or anything remotely similar to this. Like  
21 I told the PSI agent, I told SA Coder that I lost track of the return due to work, and the PSI form  
22 reflects this (it states I "overlooked it"). In October 2008, when the return was due, I worked  
23 over 300 hours on a five day court trial involving approximately \$1 million, for which I was  
24 solely responsible. This is why I lost track of the return.

25 35. "He stated that he has illegally downloaded commercial computer application  
26 software . . . ." This paragraph is from our 6/30/2009 phone conversation, not our 6/25/2009  
27 phone conversation. The FD-302 could not have been written, dictated, transcribed, and initialed

on 6/25/2009 like it claims to be. This is significant because it appears SA Coder wrote his FD-302 after OGC gave its legal opinion about the drug transaction.

36. “He stated that there are no pending issues related to the [redacted] interactive website the [sic] he developed, and the improper reimbursement procedures.” This issue was not mentioned at all during either phone conversation. SA Coder sent me questions on this issue by email after our 6/25/2009 phone conversation, and I answered them by email. The subject did not come up again.

37. I have attached all of the pre-rejection emails I exchanged with SA Coder as Exhibit 7. I note that the file does not contain any of these email messages, even though the information is relevant and much of it forms the basis for the FD-302.

#### **[redacted] Federal Law, and Medical Marijuana**

38. As an attorney licensed [redacted] law, I am qualified to give an authoritative professional opinion of the legality of my actions in May 2008 under the law of my State and its ethical rules applicable to attorneys [redacted]. I am also admitted to practice in the U.S. District Court for [redacted] and therefore I am qualified to give an opinion of Federal criminal law.

39. I note that attorney Edward M. Broussard of the FBI Office of General Counsel does not appear on the roster of [redacted] licensed attorneys. (Ms. Halle emailed Mr. Broussard for his opinion about my SF-86 attachment).

40. My professional opinion of the law of my State, ethical rules applicable in my State, and the Federal criminal law follows.

41. I did not commit any crime in the May 2008 incident. I was simply in the same house as my two friends. I was not a party to the transaction between [redacted] and [redacted]

42. I was not an aider, abettor, or accessory to any crime that may have occurred in the May 2008 incident, and I excused myself prior to any transaction or crime occurring.

43. For purposes of criminal liability, a person is either a principal, accessory, or aider and abettor. No crime occurs when someone merely witnesses part of a crime.

1           44.     Ethical duties of an attorney in [REDACTED] only arise from an attorney-client  
2 relationship, not personal life conduct, unless otherwise stated in the Rules of Professional  
3 Conduct. I did not commit an ethical violation in the May 2008 incident, because no attorney-  
4 client relationship was created. Thus, the OGC attorney's opinion that I acted unethically is  
5 wrong. I also question the appropriateness of including this curbstone opinion of law, ethics,  
6 and judgment in a factual investigative report. See Manual of Administrative Operations and  
7 Procedures at 10-17.11.2: "Do not include in details of report opinions or conclusions of Special  
8 Agents or other employees drawn from information gained by virtue of investigation."

9           45.     Although there are rules of procedure and various duties that arise from filing  
10 actions in Federal court, there are no separate Federal ethical rules for attorneys—or for that  
11 matter, any nationwide ethical rules that apply in my State.

12           46.     As an attorney in [REDACTED] I do have a general duty to "uphold" the law and  
13 not commit felonies involving moral turpitude. Upholding the law means, among other things,  
14 giving full faith and credit to judgments and opinions of any court; obeying the orders of any  
15 judge; not misleading a judge or jury with a false statement of law; and not claiming that a  
16 particular law is invalid unless [REDACTED]

17           47.     Although I regret the incident and will not make the same choices again, being  
18 present in the same house when a friend purchases a small amount of marijuana is not an offense  
19 at all, much less one involving moral turpitude.

20           48.     Moral turpitude means dishonesty or some other serious offense. For example,  
21 the [REDACTED] series of polygraph questions that I was asked and successfully passed  
22 would be offenses involving moral turpitude [REDACTED] [REDACTED] [REDACTED]

23           49.     I am not a prosecutor or law enforcement officer, and so I am not required to  
24 "enforce" the law or remove myself from unlawful situations involving others.

25           50.     The law of simple possession of marijuana [REDACTED] [REDACTED] is generally not enforced  
26 in [REDACTED] where the May 2008 incident occurred, unless some more serious  
27 offense occurs in combination. When punished, the offense of simple possession is punishable


1 by [REDACTED]  
2 [REDACTED]. In other words, it is punished less severely than a  
3 [REDACTED]. The State statute of limitations on any crime committed by [REDACTED] in the May  
4 2008 incident ran in May 2009 at the latest. No one was charged, investigated, or otherwise.

5 51. I never had possession of any marijuana, money, or anything else that was  
6 involved in the May 2008 incident.

7 52. I was not an applicant to the FBI or any other law enforcement agency, or any  
8 prosecuting attorney's office in May 2008.

9 53. Nevertheless, I freely admit that it was not a good idea to even be present for  
10 the May 2008 incident. I certainly am not going to repeat the behavior. But if I am going to be  
11 judged, I want to be judged for the words that I actually say and write, not the version of the facts  
12 that someone else has created.

### 13 Other Ethical Choices


14 54. In my SF-86, I wrote a page-long description of a serious ethical dilemma I faced  
15 in April-May 2009, yet my appropriate ethical choices were not even mentioned in the suitability  
16 determination as mitigating information. This mitigating information was also not provided to  
17 OGC before OGC "recommended" my disqualification. My statement in the SF-86 that recounts  
18 this ethical dilemma and my appropriate choices is attached as **Exhibit 8.** 

19 55. To summarize, in May 2009—a year more recently than the May 2008 incident—  
20 I lost my job because I chose to comply with an ethical duty.

21 56. The dilemma I faced was whether to disclose my FBI application to my employer,  
22 because my Phase II interview conflicted with a jury trial in which I had a prominent role.

23 57. I chose to protect my clients at my own expense, and I disclosed my Phase II  
24 interview to my employer so that the employer could minimize the impact of my absence from  
25 the portion of the trial that conflicted with Phase II. Although I performed my role in the trial  
26 successfully, my employer laid me off in response to this disclosure of my FBI application and  
27 conditional appointment.

58. After I was laid off from my law firm for pursuing a career with the FBI, I went to work for a sole practitioner in my hometown in August 2009.

59. I soon learned that this attorney was the subject of ██████ investigation for allegedly overbilling clients. I was also asked to do some things I felt uncomfortable with. I quit for ethical reasons in September 2009 and I no longer actively practice law. 

## CIA

60. After the discontinuation of my FBI application in July 2009, I applied to the CIA. I was tentatively selected for a Staff Operations Officer position and received a lengthy telephone interview in August 2009. However, the recruiter was very curious about how it is that I passed the FBI polygraph but was later rejected. Two weeks after this phone call, I was non-selected from the CIA. I assume this is because, like the FBI, the CIA does not want an attorney who was reportedly a party to a drug transaction in the recent past. I only wish that if a single Special Agent was going to decide to disqualify me, I would have had the opportunity to withdraw my FBI application in order to pursue opportunities with other Federal agencies that serve the American people equally well.

## Alcohol Use


61. In her suitability determination, the Analyst quotes from my SF-86 regarding my past alcohol use.

62. It is true that, like many young attorneys, I turned to alcohol at one point in my career to relieve the stress and pressures that I faced. I drank, but it was not to a level of abuse. Case in point, I have never been counseled on the job, gotten a DUI, or been charged with any alcohol-related offenses.

63. It is true that, from 2006-2008, I occasionally took mornings off and once or twice took a whole day off, after drinking more than I should have the night before. However, this was allowed at my law firm, which was not a traditional “9 to 5.” Unlike the support staff at my firm, which had set hours, the attorneys were allowed and encouraged to make their own schedules, could take unlimited mornings or days off as long as billable hour requirements were met, and

1 could also work from home as we saw fit.

2 64. I significantly exceeded my hours requirements in all three years I was there,  
3 and I brought in a large amount of money for the firm. As noted in my SF-86 and PSI, I have  
4 never been disciplined or warned for my attendance or performance, and I never drank before  
5 important events or legal proceedings. I never missed any deadlines or legal proceedings due to  
6 alcohol use. I also made it a point to check in with the staff before taking any time off.

7 65. This is all a moot point because one day in September 2008, several months  
8 before I applied to the FBI, I stopped drinking alcohol. Starting the following week, I worked  
9 approximately 70 consecutive 12-20 hour days on a five day court trial involving \$1 million,  
10 for which I was solely responsible. My successful preparation for and presentation of this trial  
11 without drinking and with no ill effects proved to me that I don't need to drink alcohol to relieve  
12 stress or for any other reason. This is why I no longer drink alcohol. 

### 13 Life Coach

14 66. The Analyst states in her determination that it is "important to note" that I had  
15 been seeing a psychologist since 2005 for personal development, life issues, and stress.

16 67. It is true that, from September 2005 to December 2009, I saw psychologist [REDACTED]  
17 [REDACTED] Ph.D. of [REDACTED] as my counselor and life coach.

18 68. I do not have any mental illness, and I did not seek treatment from Dr. [REDACTED] for  
19 such a condition. Rather, our approximately monthly sessions were devoted to optimizing my  
20 life, career, and personal relationships, and Dr. [REDACTED] basically acted as my facilitator in helping  
21 me pursue life goals.

22 69. One interesting outcome is Dr. [REDACTED]'s professional opinion. With four years of  
23 monthly sessions to draw from, Dr. [REDACTED] has advised me that I am well-suited for the FBI.

24 I declare under penalty of perjury [REDACTED] that the  
25 foregoing is true and correct. [REDACTED]

26 Date: 2/7/2010 [REDACTED]



**Witness**

United States of America  
Department of Justice  
Federal Bureau of Investigation

[REDACTED],  
Applicant,  
  
v.  
  
United States Department of Justice,  
Agency.

) Case No. 67B-HQ-[REDACTED]  
)  
) DECLARATION OF [REDACTED] IN  
) SUPPORT OF APPLICANT APPEAL OF  
) [REDACTED]  
)  
)  
)  
)  
)  
)

File #67B-HQ-

Declaration of \_\_\_\_\_



1 I, [REDACTED] declare as follows:

2 1. [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 **BACKGROUND**

7 2. [REDACTED] and I have been friends for 10 years— [REDACTED]

8 [REDACTED]. [REDACTED] We [REDACTED]  
9 [REDACTED] We [REDACTED]

10 **MAY 2008 INCIDENT**

11 3. From May 2-4, 2008, Mr. [REDACTED] stayed with me for the weekend for a [REDACTED]  
12 [REDACTED].

13 4. In the evening of May 2, 2008, Mr. [REDACTED] accompanied me to our mutual friend  
14 [REDACTED]'s house. I intended to [REDACTED] and  
15 Mr. [REDACTED] and I both intended to visit with our friend [REDACTED]

16 5. [REDACTED]  
17 [REDACTED]  
18 [REDACTED].

19 6. Mr. [REDACTED] advised me on the way over [REDACTED] that he could not be my  
20 attorney in any transaction that violated the law. I understood that he could not be my attorney  
21 in this transaction. Mr. [REDACTED] was not my attorney, and did not act as my attorney in this  
22 transaction.

23 7. When we got to [REDACTED]'s house, Mr. [REDACTED] initially made a few comments about  
24 [REDACTED] but he was not taken seriously at all. Mr.  
25 [REDACTED] was, at worst, comic relief to [REDACTED] due to Mr. [REDACTED]'s ignorance of drugs. After  
26 embarrassing himself, Mr. [REDACTED] excused himself and was not present when [REDACTED] and I actually  
27 [REDACTED].

28 File #67B-HQ- [REDACTED]

Declaration of [REDACTED]

1 8. Mr. [REDACTED] did not use any of the [REDACTED] Mr. [REDACTED] did not contribute in  
2 any fashion to the [REDACTED] financially or otherwise.

3 9. Mr. [REDACTED] has informed me that he reported this incident in his FBI application  
4 as him being "involved" in a drug transaction. This was a mistake, because Mr. [REDACTED] was not  
5 involved in the transaction. Neither I nor [REDACTED] considered Mr. [REDACTED] to be involved. When Mr.  
6 [REDACTED] contacted me about this incident in July 2009 and November 2009, I told him he should  
7 never have reported this incident because he was not involved.

8 10. In my opinion from knowing Mr. [REDACTED] for 10 years, he reported this incident  
9 because [REDACTED] No one with any knowledge of drugs  
10 would consider Mr. [REDACTED] to have been involved in this transaction, and he should have asked  
11 me before reporting this.

12 11. Here, Mr. [REDACTED] was not involved in the decision to make the [REDACTED] Mr.  
13 [REDACTED] was not involved in the decision to travel to the house; he simply agreed to go.

14 12. Mr. [REDACTED] was not involved and did not assist in the "negotiation" of the  
15 [REDACTED] between me and [REDACTED] Mr. [REDACTED] did not act as my representative or attorney.  
16 Mr. [REDACTED] did not contribute in any fashion, financially or otherwise, to the [REDACTED].

17 13. Until July 2009, I had never spoken with Mr. [REDACTED] about this incident.

18 14. No one was investigated or charged with any crime arising out of this incident.

19 15. Mr. [REDACTED] has not asked me to "cover" for him in any fashion.

20 16. As of this writing, no one from the FBI has ever contacted me about this incident.

21 I declare under penalty of perjury [REDACTED] that the  
22 foregoing is true and correct.

23 Date: 1/20/10  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]

28 File #67B-HQ-[REDACTED]

Declaration of [REDACTED]  
[REDACTED]

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## ARGUMENT

### A. The Polygraph Report Establishes the True Facts.

Special Agent [REDACTED] of the [REDACTED] field office conducted my polygraph examination on 6/9/2009. SA [REDACTED] questioned me in the pre-test interview about the May 2008 incident, and we discussed it in detail. The key facts developed by SA [REDACTED] were that I did not use any of the marijuana, I did not purchase it or contribute any money, and I was not present when [REDACTED] and [REDACTED] actually made their agreement and exchanged the marijuana. Essentially, I was “along for the ride.”

On the actual test, SA [REDACTED] asked me the drug-related polygraph question, which was substantially “[REDACTED] [REDACTED]?” I answered [REDACTED] and when I passed the exam it was officially determined that I was telling the truth. The true facts are that I was “present in 2008 when a friend purchased less than \$100 of marijuana,” and that I had no other involvement.

One of the best ways to test an argument is to temporarily take the contrary position. Here, assume for a moment that SA Coder’s FD-302 states the truth. What logically follows? If SA Coder is to be believed, his FD-302 indicates that I successfully duped the polygraph examiner into passing me, and SAAU into continuing me, while concealing my involvement in the drug transaction. That would be impossible; if there were any more to my involvement than simply being present, the polygraph examiner would have reported it.

Because it was officially determined that I told the truth at the polygraph examination, the Board must decide whether to believe the polygraph examiner’s version of the facts or SA Coder’s. I suggest that the polygraph examiner, clearly a more senior agent, did the better investigating and filed the more accurate report.

Given that I have offered to take a supplemental polygraph examination regarding the veracity of the facts in this appeal,<sup>1</sup> I do not expect SA Coder to dispute the fact that he read from my own written statement and did not ask the questions that his FD-302 implies were

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<sup>1</sup> Offer made in Office of Professional Responsibility complaint, filed 1/3/2010.

asked. What this means is that four Special Agents heard or read the same information, and three of them including the polygraph examiner independently wrote that I “accompanied a friend” or was “present,” without mentioning any other involvement. My question for the Board is whether it believes that the fourth Special Agent, SA Coder, has some special ability to develop information that the other three agents do not.

**B. Witness [REDACTED] Confirms the True Facts.**

The issue, of course, is not what was said or not said to SA Coder. The issue is whether I was involved in the drug transaction. My friend [REDACTED] is in the best position to determine my involvement in the transaction. Mr. [REDACTED] has filed a declaration in which he clearly states that I was not involved in the transaction. The following table shows SA Coder’s FD-302 contrasted with the true facts:

SA Coder’s FD-302	Declaration of [REDACTED]
“He said that he was involved in the decision to travel to the house to buy the drugs . . . .”	“Mr. [REDACTED] was not involved in the decision to make the purchase. Mr. [REDACTED] was not involved in the decision to travel to the house . . . .”
“He stated that he assisted in negotiating the price of the marijuana purchase between the friends.”	“Mr. [REDACTED] was not involved and did not assist in the ‘negotiation’ of the purchase price between me and [REDACTED]”
“He stated that he acted as a ‘representative’ of the buyer of the marijuana to the seller.”	“Mr. [REDACTED] did not act as my representative or attorney.”

Mr. [REDACTED] continues: “Mr. [REDACTED] was not involved in the transaction. Neither I nor [REDACTED] considered Mr. [REDACTED] to be involved.” “No one with any knowledge of drugs would consider Mr. [REDACTED] to have been involved in this transaction, and he should have asked me before reporting this.” “Mr. [REDACTED] was, at worst, comic relief to me and [REDACTED] due to Mr. [REDACTED]’s ignorance of drugs.” “Mr. [REDACTED] excused himself and was not present when [REDACTED] and I actually came to our agreement and exchanged the marijuana.”

Mr. [REDACTED]’s declaration conclusively establishes the true facts.

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1 **C. SAAU Approved the True Facts.**

2 The rule is that the Special Agent Applicant Unit is the authority in situations in which an  
3 applicant is reported to be involved in a drug transaction, or other unusual circumstances. MIOG  
4 § 67-3.2.3(5)(d).

5 Here, SAAU reviewed the polygraph report and SAAU approved the version of the facts  
6 I reported at the polygraph and in my written application. (The report references my written  
7 application). The “CONTINUE” directive is circled by the reviewer, indicating that SAAU  
8 decided to continue my processing. This may explain why SA Coder wrote his FD-302 the way  
9 he did—my written statement in the SF-86 was not enough to disqualify me, so SA Coder had to  
10 report facts that went above and beyond my SF-86.

11 Because SAAU was aware of this incident and approved my processing, the decision was  
12 made before my file went to SACU and it seems inappropriate to revisit it.

13 **D. The True Facts are not a Crime.**

14 The rule is that possession of marijuana is unlawful.

15 Here, although I was present in the same house, I did not have possession of any  
16 marijuana or money in this incident. I did not use any of the drug. In other words, I committed  
17 no crime.

18 The rule is that anyone who aids and abets a crime may be held liable as a principal.  
19 Aiding and abetting means providing material support or other resources to parties to a criminal  
20 act.

21 Here, I was not an aider or abettor because I did not provide any support, money, or  
22 other resources. I also excused myself and was not present when [REDACTED] and [REDACTED] came to their  
23 agreement and exchanged the marijuana. A person who withdraws may not be held liable as an  
24 aider or abettor.

25 No one was charged or convicted of any crime arising out of this incident. Pursuant to  
26 OPM criteria, I question the propriety of considering conduct that is not “use” of a drug and that  
27 did not result in a criminal conviction. The Analyst appears to have been aware of this problem,



1 because the beginning of her determination says the basis for her adjudicative recommendation is  
2 “drug use,” while the end of her report states the basis is “criminal conduct.”

3 **E. The True Facts are not an Ethical Violation Under** [REDACTED]

4 The Rules of Professional Conduct establish the ethical duties of [REDACTED]  
5 attorneys. There are no comparable Federal rules.

6 [REDACTED] states that an attorney may not advise a  
7 violation of law unless there is a [REDACTED].

8 Here, I advised [REDACTED] that I could not act as his attorney in this transaction. As [REDACTED]  
9 states, I did not act as his attorney or representative, and I was not involved and did not assist in  
10 any aspect of the transaction. I complied with [REDACTED].

11 The Rules of Professional Conduct impose ethical duties when an attorney is in an  
12 attorney-client relationship, and do not regulate personal life conduct of the attorney unless  
13 otherwise stated in the Rules.

14 Here, there was no attorney-client relationship. I happen to be well-versed in the area of  
15 formation of the attorney-client relationship, because [REDACTED]

16 [REDACTED]  
17 [REDACTED]. Contrary to the OGC attorney’s opinion, I was not acting as an  
18 attorney by merely being present.

19 The rule is that an attorney has a general duty to “uphold” the law and not commit  
20 felonies involving moral turpitude. Moral turpitude generally means dishonesty or serious  
21 crimes.

22 I am sorry this incident ever happened. However, being present in the same house when  
23 a friend purchases less than \$100 of marijuana is not an ethical violation. I also take issue  
24 with being informally judged by an attorney who is not licensed to practice in my State. What  
25 happened here is that I was held to a higher standard than the actual law or ethical rules of my  
26 State, based on SA Coder’s version of the facts, with no opportunity to provide a response.

27 //



**F. An Investigation in Accordance with the FBI Manual Would have  
Developed the True Facts.**

The rule is that an applicant investigation must be exacting, fair, and unbiased. MIOG § 67-7.7(4).

The rule is that a Special Agent conducting an applicant investigation “should be persistent in his/her effort to pursue every lead to its logical conclusion.” MIOG § sec. 67-7.7(7) (emphasis added).

The rule is that “[d]erogatory information should be fully developed and reported in detail. Ascertain facts on which derogatory conclusions [sic] predicated and follow through in questioning to obtain such facts.” MIOG at § 67-7.7(8) (emphasis added).

The rule is that “[r]eports should show unbiased and complete inquiry. If some question exists regarding accuracy of derogatory information, identify original sources.” *Id.* (emphasis added).

Here, in addition to making false statements as discussed in my declaration, SA Coder failed to conduct his investigations of 6/25/2009 and 6/30/2009 in accordance with the FBI manual.

SA Coder knew there were additional leads to pursue, because he twice asked me for [REDACTED] and [REDACTED]’s contact information. I provided SA Coder with [REDACTED] and [REDACTED]’s contact information as requested. The logical conclusion of SA Coder asking for and being provided two witnesses to a drug-related incident would be contacting the witnesses to see what they had to say. An unbiased and complete inquiry would include at a minimum simply calling [REDACTED] and [REDACTED] to ask if they had any comments. As the purchaser and seller, [REDACTED] and [REDACTED] were clearly in the best position to judge whether I was involved.

By failing to follow these leads to their logical conclusion, SA Coder exhibited bias, unfairness, and prejudice by manipulating his investigation. By manipulating his investigation with willful blindness to the information [REDACTED] and [REDACTED] would have provided, SA Coder concealed the true facts and the specific factual basis of my conduct.

1 Had SA Coder pursued the leads I gave him, the investigation would have revealed  
2 that I was not involved in the transaction and that I never should have reported the incident, as  
3 [REDACTED] has shown in his declaration. At worst, I misjudged my involvement when I reported this  
4 incident in my SF-86 in my effort to be forthcoming with the FBI. I find it difficult to believe  
5 that the FBI has not previously been faced with a situation in which an applicant over-reported  
6 negative information that was later cleared up in the investigation. The problem is that here,  
7 because SA Coder conducted an incomplete investigation and did not fully develop the facts, I  
8 never had that chance.

### 9 G. Supplemental Declaration

10 Because SA Coder never asked and I never answered the questions that would establish  
11 the propositions in his FD-302, I take this opportunity to ask and answer them:

12 I, [REDACTED] declare:

13 Q. Were you involved in the decision to travel to the house?

14 A. No.

15 Q. Were you involved in the decision to buy the drugs?

16 A. No.

17 Q. Did you accompany [REDACTED] for the purpose of buying marijuana?

18 A. No, my purpose was to visit with [REDACTED]

19 Q. Did you assist in the negotiation of the purchase price?

20 A. No.

21 Q. Did you act as a representative or attorney to either party?

22 A. No.

23 I declare under penalty of perjury [REDACTED] that the  
24 foregoing is true and correct. [REDACTED]

25 Date: 2/7/2010

26 //

27 //

**REQUESTED RELIEF**

The Analyst indicates in her email message to Edward M. Broussard of the Office of General Counsel that this incident was all that stood between me and the full background investigation that I was going to receive: "I was going through the process of scoping the case so that leads could be sent out and his BI could get started, when I came across an attachment he included in the SF-86 about Marijuana."

Because the suitability determination and discontinuation are based on wrong information reported by a Special Agent who (1) contradicts other Special Agents, the polygraph report, witness [REDACTED] and the applicant, and (2) failed to conduct his investigation in accordance with the FBI manual, the decisions should be reversed and my case reprocessed by different SACU personnel.

Respectfully submitted by:

2/7/2010

Date

[REDACTED]  
Applicant

Attachment 23. to SF-86: Illegal drugs

#1 In May 2008, while visiting [REDACTED], I stayed with my close friend (P-1) [REDACTED]. At one point (P-1) suggested that we go to the home of one of [REDACTED] friends (and an acquaintance of mine from college), [REDACTED]. The purpose of the visit was for (P-1) to purchase a small amount of marijuana from [REDACTED], and to visit with [REDACTED]. [REDACTED] was not a drug dealer [REDACTED], but he did keep extra marijuana around and occasionally [REDACTED] friends and acquaintances. At some point (P-1) commented about the price and wanting to get a deal [REDACTED]. I half-jokingly offered (P-1) a few negotiating tips based on my experience in mediation and settlement of lawsuits. (P-1) said he would like it if I negotiated the price with [REDACTED] as (P-1) representative, because (P-1) didn't want to deal with [REDACTED]'s eccentric behavior concerning prices, and the drama that goes with it. So when (P-1) and I arrived at [REDACTED]s, I jumped in and started saying things like "my client is willing to offer \$\_\_\_\_." This was somewhat funny to [REDACTED] and (P-1) and [REDACTED] didn't take it seriously because I knew nothing about drugs or their prices, or how to handle a drug purchase. (P-1) ultimately purchased the marijuana and I believe he and [REDACTED] directly agreed on the terms.

#2 From a few months after [REDACTED] in January 2000 until getting back from a [REDACTED] European tour in July 2002, I experimented with marijuana perhaps 6-8 times. In 2002, 2003, and/or 2004, I [REDACTED], and I believe I tried marijuana one more time (I was [REDACTED] and do not specifically recall the year, except that the latest it possibly could have been was 2004 and more likely it was 2002).

(86 Review) 5/18/2009.

Confirmation sheet for "Where you Lived?" From 9/1998- 2/2006 Lived in 7 locations (some repetitive) and did not name persons who knew him.

PAGE 4, Where you went to school! H.S. was not listed.

Note: Applicant noted on his SF 86 13A, and obtained a statement saying that he will be let laid-off 5/29/2009 on incentive terms but the reason is because office found out he is pursuing a career with FBI.

PAGE 4 ITEM 23 ILLEGAL Drug Activity: in May 2008 applicant ~~assisted~~ accompanied a roommate to purchase Marijuana, but did not smoke.

Applicant Faxed in supplemental sheet citing Past character Flaws. (A MUST READ!!).

5/19/2009

Applicant Faxed in another Supplemental Sheet citing another Past character Flow. At the end of statement applicant refers to an incident disclosed during YH II interview.



### M. Alcohol/Drugs

1. Have you used marijuana/cannabis during the last three (3) years?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
a) Have you ever used marijuana/cannabis?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If yes, complete questions on Illegal Drug Disclosure Form. (See ASIU web site.)

2. Have you used any illegal drugs(s) or combination of illegal drugs, other than marijuana, during the past ten (10) years?*	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
a) Have you ever used any illegal drugs(s) or combination of illegal drugs, other than marijuana?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If yes, complete questions on Illegal Drug Disclosure Form. (See ASIU web site.)

\*(For the purpose of this question, the term "illegal drugs" includes the use of anabolic steroids after February 27, 1991, unless the steroids were prescribed by a physician for your use alone to alleviate a medical condition.)

3. Have you used any illegal drug while employed in any law enforcement or prosecutorial position?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If yes, explain and provide position title, employer, and dates employed in this capacity.
a) Have you used any illegal drug while employed in a position which carries with it a high level of responsibility or public trust or while holding a security clearance?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If yes, explain and provide position title, level of security clearance, employer, and dates employed in this capacity.

4. Have you ever abused any over the counter products, sniffed gasoline, huffed aerosol products, abused nitrous oxide gas or helium, chewed khat (stimulant leaf) or sniffed paint/ glue?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If so, explain.
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5. Have you ever been involved in the purchase, manufacture, trafficking, production, transfer, shipping, distribution, receiving or sale of illegal drugs?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If so, provide details below as to what type, when, amount, where – public or private, how did you obtain the drugs, who else knows of the drug use, purchase, manufacture, trafficking, transfer, shipping, distribution, receiving or sale of illegal drugs?
---	--

Type of Drug	Frequency	Amount	Mo/Yr to Mo/Yr	Circumstances
Marijuana	1	Less than \$100 worth	May 2008	Accompanied a friend who was buying marijuana

(If necessary, provide attachment of additional information)

6. Have you ever used over-the-counter (OTC) or prescription drugs in a manner not consistent with the directions or medical guidance given?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If so, explain below:
--	---

Type of OTC/ prescription drug	Frequency	Mo/Yr to Mo/Yr	Circumstances

**Applicants MUST provide drug usage information covering their entire life.**

**Use additional sheets, if necessary, to fully answer all the following questions.**

1. Have you ever used any illegal drugs? ☒ Yes ☐ No

(It should be noted that the term "illegal drugs" includes the use of anabolic steroids after February 27, 1991, UNLESS, the steroids were prescribed to you by a physician, for your use, to alleviate a medical condition.)

If Yes, specify type of illegal drug, number of times used, time period of use, whether you bought it.

Type	Number of Uses	Month / Year First Used	Month / Year Last Used	Did You Ever Buy?	
Marijuana (pot, cannabis)	7-10	est. 3/2000	est. 10/2002	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Heroin				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Cocaine				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Amphetamines, e.g., Crystal Meth				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
LSD (lysergic acid)				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Hallucinogens				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Ecstasy				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Inhalants (If Yes, See Note 2)				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Anabolic Steroids (If Yes, See Note 1)				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other (specify)				<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Details:

please see SF-86 Attachments.

2. The FBI has suitability concerns over any abuse of legally obtained drugs (prescription and/or over the counter). Abuse of any legally obtained drugs means you have used the drug for non-medical purposes, to get high/recreational use.

- a. Have you ever used any prescription drug, prescribed for you or another person, for the purpose of getting high/recreational use?

☐ Yes ☒ No

- b. Have you taken any over the counter drug for the purpose of getting high/recreational use?

☐ Yes ☒ No

If you have answered yes to any of the above, specify type of prescription or over the counter drug, drug name (painkillers such as Oxycontin, amphetamines, etc.), number of times used, date of first use, date of last use and circumstances.

Details:

Applicant Initials



FEDERAL BUREAU OF INVESTIGATION  
**POLYGRAPH REPORT**

<b>REVIEWED BY:</b> SSA Ray Lauer <i>RLG</i>		<b>DATE:</b> 06/11/2009		<b>FOR FBIHQ USE ONLY</b>	
<b>RESULTS:</b> Series I <u>NDI</u>	Series II <u>NDI</u>	Series III <u>      </u>	Series IV <u>      </u>	Series V <u>      </u>	
<b>COUNTERMEASURES:</b> None Suspected <u>X</u>		Suspected <u>      </u>	Confirmed <u>      </u>		

Date of Report 06/09/2009	Date of Examination 06/09/2009	Case ID # 67B-HQ- <i>5</i>
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Field Office/Agency Requesting Examination  
FBIHQ

Authorizing Official Director, FBI	Date Authorized 03/01/1994
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Examinee's Name (Last, First, Middle) <i>[REDACTED]</i>	Date of Birth (mm/dd/yyyy) <i>[REDACTED]</i>	SSN (xxx-xx-xxxx) <i>[REDACTED]</i>
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Case Title:

BUAP-SUPPORT  
PRE-EMPLOYMENT POLYGRAPH EXAMINATION

**Case Synopsis/Examiner's Conclusion:**

This applicant is seeking employment with the FBI and has agreed to undergo polygraph testing as part of the application process.

(H) *[REDACTED]*

On June 9, 2009, the applicant, *[REDACTED]*, came to the *[REDACTED]* FBI office to take the exam. He was provided with the opportunity to view a FD-328B, "Applicant Agreement to Interview With Polygraph" form. After reading the form, he stated that he understood everything on it and then signed it.

Applicant advised on his SF-86 (6-8 usages) and pre-test interview usage on no more than 10 occasions. Applicant was present in 2008 when a friend purchased less than \$100 of marijuana. No recent use. Applicant applied for a college parking pass under what he described as false pretenses. Pirated commercial software while in college. Applicant was advised these were not serious crimes however crime question was changed. All of the previously mentioned items are explained by applicant in his application.

He was given Suitability Series I of a polygraph examination, consisting of the following relevant questions:

Suitability Series I:

(H) *[REDACTED]*

Examiner's Name SA *[REDACTED]* *RLG*

CONTINUE/DISCONTINUE  
INITIALS: *[Signature]* DATE: 6/12/09  
CODE: SAAU



- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/25/2009

On June 25, 2009, [REDACTED] (applicant), telephone number [REDACTED], was interviewed telephonically by SA Graham L. Coder (the author). [REDACTED] is currently an applicant for a Special Agent position with the Federal Bureau of Investigation.

Applicant was advised that the author has been "temporarily assigned to move the case forward" and that applicant's background investigation "should be starting soon." The author described the background investigation to applicant and how author would serve as a central repository for information coming in from the field.

Applicant was then asked about a May 2008 incident reported in his SF-86. Applicant was read aloud his SF-86 attachment 23 concerning illegal drugs, which reported the incident. Applicant confirmed that he had written the attachment and that it was accurate. Applicant denied using any of the marijuana purchased by his friend [REDACTED] from applicant's other friend [REDACTED]. Applicant denied contributing money or otherwise to [REDACTED]'S purchase. Applicant characterized his involvement as being merely along for the ride.

Applicant was asked for his friends' contact information, and applicant advised that his friend [REDACTED] was identified in applicant's roommate attachment. Applicant advised that he would need to look up contact information for [REDACTED]. This author advised applicant that [REDACTED]'S information was not needed at this time but might be needed in the future.

Applicant later sent the attached email message regarding this interview. In the email, applicant invited reference to his polygraph examination report and the examiner's notes.

Special Agent [REDACTED] of the [REDACTED] Field Office, who conducted applicant's polygraph examination, was contacted. SA [REDACTED] recalled the applicant and advised that his report of the polygraph was accurate. The report states that applicant was "present" for a purchase of less than \$100 of marijuana by the applicant's friend, and does not mention other involvement. This is confirmed in the Personnel Security Interview when applicant stated he "accompanied a friend" and in the SF-86 review notes stating the same thing.

After discussing the May 2008 incident, applicant was asked

Investigation on 06/25/2009 at Washington, D.C. (telephonically)

File # 67B-HQ-[REDACTED] Date dictated 06/25/2009

by SA Graham L. Coder **SAMPLE**

67B-HQ-[REDACTED]

Continuation of FD-302 of [REDACTED]

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about a number of areas previously discussed at his Personnel Security Interview and reported in his SF-86. Applicant was asked to identify all parking citations referred to in his SF-86 as being from "various parking enforcement agencies." Applicant asked for and was given permission to send this and other follow up information by email. Attached hereto are applicant's email messages reporting the information asked for by the author. Applicant answered all of the author's questions to the author's satisfaction.

Applicant was asked about his 2007 [REDACTED] tax return. Applicant reported being late on the return in his SF-86. Applicant stated that he lost track of the return due to work, and this is also recorded in the Personnel Security Interview form.

Applicant reported that his 2008 taxes are legally on extension and that applicant calculated his withholding in advance to ensure compliance, rather than simply guessing that his withholding covered at least 90% of his tax liability for 2008. Please see instructions to IRS Form 4868.

While waiting for applicant's email message with follow up information, the author sent his own email to applicant with additional follow up areas. Applicant also answered these questions to the author's satisfaction and the email messages between author and applicant are attached hereto.

**Subject:** Background information

**From:** [REDACTED]

**Date:** Thu, 25 Jun 2009 09:43:18 -0700

**To:** [REDACTED]

**BCC:** [REDACTED]

Hi Graham,

Thank you for talking with me today 6/25/09 about my FBI application. Here is the information you requested. You also asked for documentation; I intend to send that separately, as I need to find a scanner. Actually, I was wondering if I could mail you documents if I can't find a scanner within a reasonable time. Are you at Headquarters?

1. Parking citations that went to collections: date, amount, circumstances, disposition, where received, agency.

2001 (est.) \$40 (est.) I received a citation for parking in a street cleaning zone during posted hours for street cleaning. I believe I missed the initial deadline to pay the citation and I do not recall whether the citation was sent to collections. In any event, I paid citation. The citation was received near my residence at the time, [REDACTED] The agency was the [REDACTED], mailing address [REDACTED]

2002 (est.) \$40 (est.) I received a citation for parking in a street cleaning zone during posted hours for street cleaning. I believe I missed the initial deadline to pay the citation and do not recall whether the citation was sent to collections. In any event, I paid [REDACTED]

2002 (est.) \$40 (est.) I received a citation for parking in a campus parking lot with an expired daily pass. I had inadvertently failed to move my car by 8 a.m. (the start of enforcement). I believe I missed the initial deadline to pay the citation, but I do not recall whether the citation was sent to collections. In any event, I [REDACTED] The [REDACTED]

November 2008 \$50 (est.) I received a citation for an expired meter in a city parking lot in [REDACTED]. I was parking an Avis rental car in a lot near my residence. My own car was in the shop. I mailed a check to the address provided in the citation but it turns out I neglected to put a stamp on the envelope. A month or two later, I received a notice that the citation was late and unpaid. I then [REDACTED] the original check in the mail by "return to sender." I sent the original check to the City of [REDACTED]. I then received a notice that the citation was being sent to collections. The rental car agency [REDACTED] collection agency and charged my credit card the full penalty amount, over \$100. However, bank records indicated that a check from me to the City of [REDACTED] was cashed in the same time frame. The charge is currently being investigated and worked out between [REDACTED] the credit card issuer, and the rental agency since either I or the rental agency may be owed a refund. It is also possible that I am misremembering which check was used to pay which citation (I have received a few other citations from the city of [REDACTED] but have not maintained copies of citations). The agency is the City of [REDACTED] (Parking Services) and does not provide an address. Their phone number is [REDACTED]. The disposition of this citation is paid.

I do not recall paying any other parking citations late. If I did, they would have been from the [REDACTED] Department of Transportation, from which I received a number of parking tickets over the years. The only citation I am sure was sent to a collection agency was the November 2008 citation. However, I threw away the notice months ago and I do not know which collection agency it was.

2. Due date and amount of penalty due for late filing of 2007 [REDACTED] income tax.

When we spoke, I said that I had recently received [REDACTED] of penalty and interest due for the late filing of my 2007 [REDACTED] income tax return, and that I still had some time to pay the [REDACTED]. I was wrong—the due date was 6/19/09. The amount is \$67.22, which is a late filing fee of \$62 plus interest and fees. What happened was that I received the notice (dated 6/4/09) a few days before I moved out of my apartment on 6/10/09, and I packed it up with everything else not realizing I only had two weeks to pay the balance due. Today 6/25/09 I am sending a check in payment of the amount due. I will provide a copy of the notice under [REDACTED] another notice, past experience with the [REDACTED] suggests it will be of the type [REDACTED] has been made. The [REDACTED] may be reached [REDACTED].

### Exhibit 7

3. My address for the 2001 (est.) collection from Verizon regarding my [REDACTED]

phone bill.

At that time, I was living at [REDACTED]. I  
do not have any records of this time.

4. Copy of my license to practice law [REDACTED].

I will [REDACTED]  
[REDACTED]

Thanks for your attention in this matter. A final note- the polygraph  
examiner and I discussed my Attachment 23 and my friend's purchase of  
marijuana in 2008 in some detail. If you are able to see his  
report/notes, perhaps that may be of some assistance.

Best,  
[REDACTED]

**Subject:** Follow up items for FBI app.

**From:** "Coder, Grahm L." >

**Date:** Thu, 25 Jun 2009 17:09:17 -0400

**To:** '

,

Thank you for speaking with me today. As a reminder here are the items that you need to follow up on:

tax due to , please fax or scan a copy of the statement at this email, or at

2. Verizon- for the item that they had a collection on you, please provide your address at the time and their address, also if you can obtain a copy of the documentation, please provide it. Please provide any documentation of you satisfying this collection as well

3. I was able to verify your BAR association membership , no need to follow up there.

4. Parking violations, please provide any information with regard to dates, places, agencies, ticket numbers, resolutions, and current status.

Also I need to follow up on additional items:

1. During your PSI and SF-8 discussed improper reimbursement procedures that you performed while acting as . You then mentioned that you made a donation back to the organization. How much did you donate? Provide the name of the foundation that we might confirm the donation. Please also provide the details regarding the mitigation that you to. Was there an official action taken against you? Was there any allegations against you? Does know about the improper reimbursements? Please be very detailed in your description. Please include , names, and circumstances in your explanations along with any other pertinent details.



**Subject:** Re: Follow up items for FBI app.

**From:** [REDACTED]

**Date:** Thu, 25 Jun 2009 16:05:32 -0700

**To:** "Coder, Graham L." [REDACTED]

Hi Graham,

Please see interlineations after each requested item.

Best,

Co [REDACTED] rahm L. wrote:

Thank you for speaking with me today. As a reminder here are the items that you need to follow up on:

1. for your tax due to [REDACTED] fax or scan a copy of the statement a [REDACTED]

I have faxed the payment coupon/notice to your attention at the phone number indicated. Please advise if you have not received it.

2. Verizon- for the item that they had a collection on you, please provide your address at the time and their address, also if you can obtain a copy of the documentation, please provide it. Please provide any documentation of you satisfying this collection as well

Unfortunately, I have no documentation or information on their address at the time. I provided my address at the time. I do not have proof of payment.

[REDACTED] ble to verify your BAR association membership [REDACTED], no need to follow up there.

4. Parking violations, please provide any information with regard to dates, places, agencies, ticket numbers, resolutions, and current status.

I provided all the information I have; all such violations are paid and I'm only sure about one citation actually going to a collection agency.

Also I need to follow up on additional items:

1. During your PSI and SF-86 you discussed improper reimbursement performed while acting as the web developer for [REDACTED]. You then mentioned that you made a donation [REDACTED] ation. How much did you donate? Please provide the name of the foundation that we might confirm the donation. Please also provide the details regarding the mitigation that you made reference to. Was there an official act [REDACTED] nst you? Was there any allegations against you? Does [REDACTED] know about the improper reimbursements? Please be [REDACTED] in your description. Please include dates, times, names, and circumstances in your explanations along with any other pertinent details.

[REDACTED] ion is the [REDACTED] Association of [REDACTED].  
[REDACTED] rm my donation i [REDACTED].

No official action was taken; no allegations were made; no one knows about the cash reimbursement although members were generally aware of the service I was providing, as well as the fact that I wasn't happy that I wasn't being reimbursed for it. There are two people who might remember [REDACTED] ces although they also don't know about my reimbursing myself with cash from the event. The fi [REDACTED] he time  
His contact info [REDACTED].

The donation I made covers most or all of the cash portion collected in Fall 2000, the circumstances of which are accurately described in my supplemental SF-86 attachment. Several months later check portion of the re [REDACTED] s approved to be used to reimburse me for [REDACTED] y remember. His contact information is: [REDACTED]

If there is any way this can be done, I would respectfully request that [REDACTED] only be [REDACTED] e donation rather than advised why I made the donation. [REDACTED] was a men [REDACTED] me in my decision to go to law school, and it would be extremely embarrassing to me. [REDACTED], he other members would be too upset since they saw firsthand the lengths I was going to with [REDACTED] and the benefit that resulted.

Please advise if this is not sufficient for your purposes or if there is any other information you would like.

Best,

[REDACTED]

**Subject:** Background information

**From:** '[REDACTED]'

**Date:** Fri, 26 Jun 2009 13:57:10 -0700

**To:** [REDACTED]

Hi Grahm,

As I understand it, one of the components of the background investigation is a credit report. I would like to share some preliminary notes on that.

While I have good-to-excellent credit, my report will show two significant credit card balances. If these are any concern to the FBI, I respectfully would ask that the Bureau consider the following.

Because I really want this job, I have made arrangements for an interest-free loan from a family member that could wipe out about 60% of my balances. The other 40% would be gone after New Agent Training since I won't have housing or transportation expenses while at the Academy for almost five months, leaving more money available for paying down my balances. I would prefer not to borrow from a family member since it's a matter of personal pride, but if it made the difference in my application I wouldn't hesitate. So my question is, if there is any concern over my two credit cards, what kind of a change in balances would it take for the Bureau to say yes?

Thanks,





**Subject:** Contact information

**From:** "

**Date:** Tue, 30 Jun 2009 10:55:00 -0700

**To:**

Hi Grahm,

's contact information is:

Thanks,

**Exhibit 7**