

[REDACTED]

May 1, 2011

Director Robert S. Mueller III
Federal Bureau of Investigation
935 Pennsylvania Ave. NW
Washington, D.C. 20535

Re: Special Agent applicant file no. 67B-HQ-[REDACTED]
[REDACTED]

Dear Director Mueller,

This concerns the appeal of my non-selection for the Special Agent position.

On July 1, 2009, my application was discontinued after I had passed the polygraph and been referred to the Special Agent Clearance Unit for the background investigation. My BI was never completed; I was discontinued based on my written application and a single FD-302 written by a SACU Special Agent.

On February 7, 2010, I appealed the decision by sending a properly formatted, well-supported appeal to Acting Unit Chief Montchell Brice of SACU, who made the decision to rescind my conditional appointment.

On February 26, 2010, Section Chief Mark A. Gant of the Initial Clearance Section wrote the enclosed letter and said that I had "exhausted" my "administrative options" regarding the appeal. He did not say that my appeal was granted or denied. In other words, the Adjudication Review Board never heard my appeal. This appears to invite an action for administrative mandamus to compel Section Chief Gant to refer the matter to the Adjudication Review Board for a hearing.

I am at a loss as to why Section Chief Gant constructively denied my appeal when other discontinued applicants I have talked to or know of have had their appeals heard and determined, and in some cases granted.

I enclose a copy of my revised appeal. I understand that your position and time commitments do not permit you to personally review and decide the appeal. However, the appeal raises important issues implicating the FBI's core values, especially that of Integrity.

I feel that if you or your designee were to review and decide the appeal, you would get a kind of snapshot of what appears to be occurring in applicant selection at the Special Agent Clearance Unit level.

In the alternative, would you consider directing the review board to hear and determine the appeal? All I ask is to be given the same opportunity for a review board hearing that I know other discontinued applicants have received.

I am aware that the Department of Justice has a hiring freeze in effect. My understanding is that if the appeal were to be granted, I would be placed on a waiting list on which I would compete with other applicants for an available position when the hiring freeze is lifted.

I enclose proposed orders reflecting the above-described alternatives. Thank you for considering these requests.





U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

February 26, 2010

[REDACTED]

Dear Mr. [REDACTED]:

We have received and carefully reviewed your correspondence dated February 07, 2010. Unfortunately you have exhausted all of your administrative options regarding the appeal of your non-selection for the Special Agent position. Therefore, the Federal Bureau of Investigation considers this matter closed and we will not communicate with you any further.

Thank you for your interest in the FBI. We wish you well in your future endeavors.

Sincerely yours,

Mark A. Gant, Section Chief
Initial Clearance Section
Security Division

FEDERAL BUREAU OF INVESTIGATION

Precedence: ____Priority ____Routine

Date: _____

From: Director

To: Security
Initial Clearance Section
Attn: SSA Mark A. Gant

San Francisco
Attn: Applicant Coordinator

Case ID #: 67B-HQ-[REDACTED]

Title: [REDACTED]
BUAP - SPECIAL AGENT
ORDER

Synopsis: Convene the Adjudication Review Board to hear and determine applicant's appeal dated 5/1/2011.

Details:

The applicant was discontinued on July 1, 2009. The applicant appealed the decision on February 7, 2010 but the review board never heard his appeal.

The applicant appealed to the Director on May 1, 2011. The applicant's written appeal (enclosed) is to be presented to the Adjudication Review Board for a determination in accordance with its established procedures. Advise the applicant of the results.

Robert S. Mueller III
Director

Enc.: First Amended Applicant Appeal dated May 1, 2011

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ____Priority ____Routine

Date: _____

From: Director

To: Security
Initial Clearance Section
Attn: SSA Mark A. Gant

San Francisco
Attn: Applicant Coordinator

Case ID #: 67B-HQ-[REDACTED]

Title: [REDACTED]
BUAP - SPECIAL AGENT
ORDER

Synopsis: The applicant's appeal of 5/1/2011 is GRANTED.

Details:

The applicant was discontinued on July 1, 2009. The applicant appealed the decision on February 7, 2010 but the review board never heard his appeal.

The applicant appealed to the Director on May 1, 2011. The Director or his designee heard and determined the appeal.

The appeal is GRANTED. Advise applicant of the results. Reinstate the applicant and continue applicant's processing.

Robert S. Mueller III
Director

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ____Priority ____Routine

Date: _____

From: Director

To: Security
Initial Clearance Section
Attn: SSA Mark A. Gant

San Francisco
Attn: Applicant Coordinator

Case ID #: 67B-HQ-[REDACTED]

Title: [REDACTED]
BUAP - SPECIAL AGENT
ORDER

Synopsis: The applicant's appeal of 5/1/2011 is DENIED.

Details:

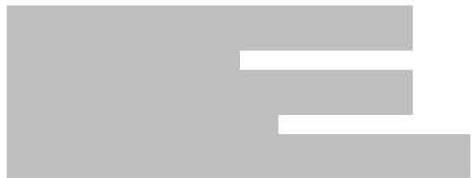
The applicant was discontinued on July 1, 2009. The applicant appealed the decision on February 7, 2010 but the review board never heard his appeal.

The applicant appealed to the Director on May 1, 2011. The Director or his designee heard and determined the appeal.

The appeal is DENIED. Advise applicant of the results.

Robert S. Mueller III
Director

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Applicant

United States of America
Department of Justice

Federal Bureau of Investigation



Applicant,

v.

U.S. DEPARTMENT OF JUSTICE

Agency.

Case No. 67B-HQ-

FIRST AMENDED APPLICANT APPEAL

Robert S. Mueller III,
Director

Appeal Filed:
May 1, 2011

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EXHIBITS

1 **INTRODUCTION**

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

7 I appeal the negative suitability determination and the
8 discontinuation of my application to the Director. I request a
9 hearing by the Director or the Adjudication Review Board.

10 The decisions should be reversed because they are based on
11 false information, which was reported by a SACU Special Agent
12 and relied upon by a SACU Personnel Security Specialist, each of
13 whom manipulated the process to ensure my disqualification after
14 deciding I was unworthy of serving the FBI. An OGC attorney
15 contributed to this negative outcome by giving an inappropriate
16 and inaccurate opinion of law, ethics, and judgment.

17 **CHRONOLOGY**

18 12/2/2008 Special Agent application filed.

19 1/8/2009 Phase I written test.

20 5/1/2009 Phase II interview and written test.

21 5/6/2009 Phase II passing results, and Conditional
22 Appointment is made.

23 5/18/2009 SF-86 and Cover Sheet turned in.

24 5/28/2009 Personnel Security Interview.

25 6/9/2009 Polygraph Examination.

26 6/15/2009 Background Investigation initiated.

27 6/24/2009 PSS Halle emails Edward M. Broussard, Esq. to
28 inquire about one of my SF-86 attachments.

1 6/25/2009 First contact with Special Agent Clearance Unit.

2 6/30/2009 Last contact with SACU.

3 6/30/2009 Suitability determination made.

4 7/1/2009 Conditional appointment rescinded.

5 2/7/2010 Appeal filed.

6 2/26/2010 Appeal constructively denied without a hearing.

7 5/4/2011 First Amended Appeal filed.

8 **PROBLEM**

9 I was deemed not suitable for employment on the bases of
10 "drug use" and "criminal conduct" for reportedly being involved
11 in a drug purchase by a friend in May 2008.

12 Although I was present, I was not involved in the
13 transaction of less than \$100 of marijuana between two friends,
14 and I did not use drugs. The reports of three Special Agents
15 and the Declaration of witness [REDACTED] in support hereof
16 confirm that I was not involved in the transaction and did
17 not use drugs. On June 12, 2009, the Special Agent Applicant
18 Unit approved my continued processing despite this incident,
19 confirming its understanding from my polygraph report that I was
20 not involved in the transaction and did not use drugs.

21 The problem lies with Special Agent Grahm L. Coder of SACU¹
22 ("SA Coder") and Personnel Security Specialist Abby M. Halle
23 ("PSS Halle"), also of SACU.

24 After reviewing my written application, PSS Halle decided to
25 disqualify me on any possible basis. Attached as Exhibit 1 is an
26 email message from PSS Halle to attorney Edward M. Broussard of
27 OGC, which demonstrates PSS Halle's prejudice against me

28 ¹ SA Coder was on temporary duty at SACU in June 2009 after
graduating the Academy in approximately April 2009.

1 ("This applicant is a lawyer so I want to make sure that we
2 could potentially discontinue him for this and not have him come
3 back to appeal it."). This attitude is problematic, because
4 intake analyst Kimberly Ann Maggi, also of SACU, approved my
5 written application and this incident, and PSS Halle had no new
6 information to rely upon in making her suitability determination.
7 So PSS Halle directed SA Coder to develop disqualifying
8 information that would sustain the suitability determination
9 she had already decided to write. PSS Halle's suitability
10 determination is attached as **Exhibit 2**.

11 SA Coder spoke with me on 6/25/2009 and 6/30/2009. He
12 prepared a FD-302 in which he represented to the FBI that I
13 illegally negotiated the purchase and sale of drugs as an
14 attorney. SA Coder's FD-302 is attached as **Exhibit 3**. I did
15 not make or adopt the statements that SA Coder attributed to me.
16 Therefore, SA Coder made false statements to the FBI. He did
17 this because he wished to disqualify me on any possible basis, in
18 accordance with PSS Halle's instructions to him.

19 In addition to making false statements, SA Coder wilfully
20 failed to fully investigate the incident. Specifically, SA Coder
21 chose not to contact the very witnesses he asked for and that I
22 provided. SA Coder omitted the witnesses' names and information
23 from his FD-302 and the file, apparently to prevent anyone else
24 from contacting the witnesses to see what they had to say.

25 After the discontinuation of my application, I contacted the
26 witnesses myself. Both witnesses stated that I was not involved
27 in the subject transaction and never should have reported it
28 to the FBI. SA Coder's failure to pursue these leads to their

1 logical conclusion--contacting the witnesses who were in the best
2 position to judge my "involvement" in the transaction--as well as
3 his concealment of their identities from the FBI, makes his
4 FD-302 a false investigative record.

5 The FD-302 is highly damaging because it is apparently the
6 basis for an opinion of law by Edward M. Broussard of the Office
7 of General Counsel that I was involved in the drug transaction,
8 that I was acting as an attorney, and that I acted unethically
9 and with poor judgment. It was this opinion and its basis that
10 were used to disqualify me from employment with the FBI.

11 The three Special Agents who (1) reviewed my SF-86,
12 (2) interviewed me on the subject in the Personnel Security
13 Interview, and (3) conducted my polygraph examination also filed
14 reports. These three Special Agents contradict SA Coder and
15 report that I was merely "present" or "accompanied a friend,"
16 without any mention of me being involved in the transaction.
17 PSS Halle omitted these other versions of the facts from her
18 suitability determination, and from her communications with the
19 Office of General Counsel.

20 Because of these conflicting versions of the facts within
21 the FBI's own files, it is now up to the Director or the Board
22 to decide who to believe. Should the Board believe SA Coder? Or
23 should the Board believe Special Agent [REDACTED], Special
24 Agent [REDACTED], the Special Agent who reviewed my SF-86,
25 witness [REDACTED], and me?

26 Being present in the same house but not involved when two
27 friends exchange less than \$100 of marijuana is not a violation
28 of the FBI drug policy stated in the manual, OPM suitability

1 guidelines, California or Federal law, or ethical rules
2 controlling attorneys licensed in my State.

3 OGC's legal opinion was given by an attorney who is not
4 licensed to practice law in California, and who is therefore
5 unqualified to judge me under the rules of professional conduct
6 of my State. Attorney Edward M. Broussard should have referred
7 PSS Halle's questions to the Director of the FBI, who is likely
8 the only California-licensed attorney in the chain of command.

9 Because the suitability determination and discontinuation
10 of my application were based on false information, an incomplete
11 investigation, a wrong legal opinion, and partial information,
12 the decisions should be reversed and my application reinstated.

13 **FACTS**

14 **A. Declaration of [REDACTED]**

15 1. This summarizes an incident that I reported in my
16 SF-86, and what I reported to FBI personnel at the Personnel
17 Security Interview and Polygraph Examination. For additional
18 factual information, please see the Declaration of [REDACTED]
19 at page 27.

20 2. In May 2008 (age 27--three years ago), at the
21 suggestion of my college friend [REDACTED], with whom I was staying
22 for the weekend for an event, I accompanied [REDACTED] to our mutual
23 friend [REDACTED]'s house. [REDACTED] intended to obtain a small amount
24 of marijuana (less than \$100) from [REDACTED], and I intended to visit
25 with [REDACTED]. [REDACTED] was not a drug dealer, but he did keep extra
26 marijuana around and occasionally shared it with friends. While
27 on the way over to [REDACTED]'s place, [REDACTED] lamented [REDACTED]'s eccentric
28 behavior concerning prices, and I half-jokingly offered [REDACTED]

1 a few tips in negotiating that I had picked up in a recent
2 mediation at work. When we got to [REDACTED]'s, I initially made a few
3 comments on what [REDACTED] was asking for and what [REDACTED] was willing
4 to pay, but I ended up embarrassing myself because I know little
5 to nothing about drugs, and I was not taken seriously. I excused
6 myself and left the room--I had no personal knowledge of what
7 [REDACTED] and [REDACTED] agreed to or of any crime that occurred after I
8 left. I did not use any of the marijuana. I did not contribute
9 in any fashion to the purchase, financially or otherwise. [REDACTED]
10 drove us over to [REDACTED]'s place.

11 3. In my attempt to be as forthcoming as possible with
12 the FBI and in an abundance of caution, I reported this incident
13 as being "involved" in a drug transaction when responding
14 to question 23C of the SF-86. My original SF-86 attachment
15 explaining this incident is attached as Exhibit 4. Both [REDACTED]
16 and [REDACTED] later told me that I was wrong about being involved,
17 that I was not involved in this transaction, and that I never
18 should have reported it. Supporting this, even my original SF-
19 86 attachment stops short of saying I had any substantive role in
20 the transaction; I was simply there and talking with [REDACTED] and
21 [REDACTED]. To the extent the attachment is ambiguous, I apologize
22 but this is one reason the incident should have been fully
23 investigated in accordance with the FBI manual.

24 **The SF-86**

25 4. The unnamed Special Agent who reviewed my SF-86 shortly
26 after I submitted it on 5/18/2009 wrote a handwritten sheet of
27 notes, which is attached as Exhibit 5. The Special Agent wrote
28 "In May 2008 Applicant ~~assisted~~ accompanied a roommate [sic]

1 to purchase marijuana, but did not smoke." The agent clearly
2 understood the statement, as he crossed out the word "assisted"
3 on his notes before writing that I merely accompanied my friend.

4 5. Likewise, intake analyst Kimberly Ann Maggi of SACU
5 reviewed the attachment when my SF-86 was initially transmitted
6 to SACU, and she concluded it was harmless enough to continue my
7 processing.

8 **Personnel Security Interview**

9 6. The Personnel Security Interviewer, SA [REDACTED]
10 of the San Francisco field office, heard substantially the above
11 information, and she wrote in the PSI Form that I "Accompanied a
12 friend who was buying marijuana." This page of the PSI form is
13 attached as **Exhibit 6.**

14 7. Also at the PSI, I filled out the illegal drug use
15 questionnaire, which is attached as **Exhibit 7.** I answered "no"
16 for the question "Did you ever buy?" I have never purchased
17 marijuana or any other illegal drugs.

18 **Polygraph Examination**

19 8. The polygraph examiner, SA [REDACTED] of the San
20 Francisco field office, heard all of the above information,
21 including the key fact that I was not present when any crime
22 occurred, because I had excused myself and left the room. Under
23 appropriate questioning directed to whether I had "lawyered" my
24 SF-86 attachment, I explained to SA [REDACTED] that this is why I used
25 the phrase "I believe he and [REDACTED] directly agreed on the terms"
26 in my SF-86 attachment: because I did not have personal knowledge
27 of what happened after I left the room. SA [REDACTED] wrote in his
28 report: "Applicant was present in 2008 when a friend purchased

1 less than \$100 of marijuana." Supervisory Special Agent Ray
2 Lauer from the Polygraph Unit approved the polygraph report.
3 An unnamed Supervisory Special Agent from the Special Agent
4 Applicant Unit appears to have approved my continued processing
5 despite this incident, because he/she circled and initialed
6 the "CONTINUE" directive on 6/12/2009. My polygraph report is
7 attached as **Exhibit 8.**

8 **Personnel Security Specialist Abby M. Halle**

9 **a. Communication with Edward M. Broussard**

10 9. On 6/24/2009, PSS Halle sent Exhibit 1 to attorney
11 Edward M. Broussard of OGC. PSS Halle failed to include any
12 mitigating information, such as the incident disclosed in my
13 SF-86 in which I lost my job in May 2009 because I chose to
14 comply with an ethical duty to protect clients (see p. 22).

15 **b. Assignment to SA Coder**

16 10. On information and belief, between 6/24/2009 and
17 6/25/2009, PSS Halle communicated to SA Coder her need for
18 disqualifying information that would sustain a suitability
19 determination if appealed within the FBI.

20 **Special Agent Grahm L. Coder**

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

22 11. On 6/25/2009, I received a phone call from a person
23 who identified himself as Special Agent Grahm Coder, FBI ("SA
24 Coder").

25 12. SA Coder stated that he was "temporarily assigned
26 to move the case forward" and that my background investigation
27 "should be starting soon." SA Coder explained that his job was
28 to act as a central repository for information coming in from the

1 field during my background investigation. SA Coder described the
2 background investigation in a manner that indicated that SA Coder
3 was somehow in charge of the background investigation.

4 13. Referring to my SF-86 attachment 23, SA Coder asked
5 whether I had used any of the marijuana purchased by my friend
6 [REDACTED], and whether I contributed any money to the purchase.
7 I clearly stated that I did not use any of the marijuana or
8 contribute money to the purchase. SA Coder then attempted to get
9 me to change my answer by pretending to be my friend. He stated
10 "it's ok...you can tell me" in a sympathetic voice. I cannot
11 change the truth and I did not change my answer. I did not use
12 any of the marijuana or contribute to its purchase, and I am in
13 compliance with the FBI's policy on drugs stated on its web page
14 and in the FBI manual.

15 14. SA Coder then asked the following question:

16 Q. "Were you involved in the decision to go to the
17 house to buy the drugs?"

18 15. I reflexively laughed at his question. This is like
19 asking someone, "did you start beating your spouse last year
20 or this year?" It was a compound question with no reasonable
21 answer. I have heard, read, and/or responded to hundreds of
22 these types of deliberately misleading questions or statements in
23 my career as an attorney.

24 16. In this case, SA Coder's question was compound because
25 it inappropriately combined (1) my decision to go "along for the
26 ride" to visit my friend [REDACTED] with (2) [REDACTED]'s suggestion that
27 we go to the house, and (3) [REDACTED]'s decision to buy the less
28 than \$100 of marijuana from [REDACTED]. If I had answered "yes" to SA

1 Coder's question, it would later be claimed that I and not [REDACTED]
2 had decided to buy the marijuana. If I had answered "no" to his
3 question, I would have denied deciding to go along to the house,
4 which would not be true. This is why I laughed at SA Coder and
5 did not answer the question.

6 17. Despite my not answering his question, SA Coder writes
7 in his FD-302 (Exhibit 3): "He said that he was involved in the
8 decision to travel to the house to buy the drugs" This
9 is a false statement because I never answered his question, and I
10 said nothing to that effect.

11 18. The statement in SA Coder's FD-302 that I "traveled
12 with a friend to another friend's house for the purpose of buying
13 marijuana" is also a false statement, because my purpose was to
14 visit with [REDACTED], not buy marijuana. This is clearly indicated in
15 my SF-86 as well as the reports of three Special Agents that I
16 merely "accompanied a friend."

17 19. After I responded to SA Coder's initial question with a
18 laugh, he withdrew the question. Instead of asking me questions
19 that would establish the propositions stated in his FD-302, he
20 said "let's do it this way" and he proceeded to read aloud from
21 my SF-86 attachment, and then ask me whether it was true.

22 20. What could I say? That I filed a false statement with
23 my application? Of course my SF-86 attachment is true--but it
24 stops short of stating any substantive role in the transaction.
25 For example, I wrote: "[REDACTED] didn't take [my comments] seriously
26 because I knew nothing about drugs or their prices, or how to
27 handle a drug purchase." SA Coder did not ask me follow up
28 questions after he read my statement to me, so I had no chance to

1 add more information.

2 21. SA Coder did not read aloud to me the statements in his
3 FD-302, and I did not adopt SA Coder's statements as my own.

4 22. SA Coder did not ask me whether I "assisted in
5 negotiating the price of the marijuana purchase between my
6 friends." I did not tell him that I assisted in negotiating the
7 price of the marijuana purchase between my friends.

8 23. SA Coder did not ask me whether I acted as a
9 "representative" of the buyer of the marijuana to the seller. I
10 did not tell him that I acted as a representative of the buyer to
11 the seller.

12 24. SA Coder did not ask me whether I was involved in the
13 negotiation of the purchase price. I did not tell him that I was
14 involved in the negotiation of the purchase price.

15 25. Instead of asking me these questions, SA Coder read
16 to me from my own written statement. Other than me denying
17 using any of the marijuana or contributing money, no new
18 information about the May 2008 incident was developed in our
19 phone conversations. With his FD-302 SA Coder has changed my
20 SF-86 attachment to his own version of the facts, in accordance
21 with his and PSS Halle's apparent prejudice, bias, and goal of
22 disqualifying me.

23 26. Had SA Coder actually asked me the questions that would
24 establish the facts stated in his FD-302, I would have answered
25 "no" to each of them. Please see my Supplemental Declaration at
26 the end of this appeal where I finally get a chance to answer the
27 questions that were not asked.

28 27. I did not assist in the negotiation of the price of

1 the marijuana purchase between my friends. I did not act as an
2 attorney or representative for either party in this transaction.

3 28. I had advised [REDACTED] on the way over to [REDACTED]'s house
4 that I could not act as his attorney, because an attorney
5 may not advise a violation of law. We both understood that.
6 Under California law, an attorney-client relationship is only
7 created by the agreement of both parties. No attorney-client
8 relationship was created here, and this is one reason I did not
9 assert the attorney-client privilege in response to Question 23
10 of the SF-86.

11 29. I have prepared my own FD-302 of the 6/25/2009
12 conversation with SA Coder, which is attached as Exhibit 9.
13 This is what I would have written if I had been in SA Coder's
14 position.

15 30. I did not check with [REDACTED] or [REDACTED] before answering
16 "yes" to Question 23 of the SF-86 regarding involvement in the
17 illegal handling, purchase, delivery, etc. of drugs. I did not
18 check with them first for two reasons. One, my personal policy
19 is to be uncompromisingly honest with the authorities; it was the
20 most honest thing to do to just report it and let the FBI sort it
21 out. Two, I didn't want it to be claimed that I had ever asked
22 my friends to "cover" for me. If I didn't contact them, no one
23 could later say that I asked them to cover for me.

24 31. Both [REDACTED] and [REDACTED] advised me on two separate
25 occasions in July 2009 and November 2009 that I was not involved,
26 that I should not have reported that I was involved, and that
27 they did not consider me to be involved in the transaction. [REDACTED]
28 also advised me that he had a Medical Marijuana license at the

1 time of the incident. I do not know what the terms of [REDACTED]'s
2 license are; whatever they are, he legally obtained his marijuana
3 under California law.

4 32. [REDACTED] and [REDACTED] have advised that they are available at
5 any time to speak with investigators and set the record straight.
6 Their contact information follows:

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

11 33. On 6/25/2009, SA Coder asked me for both [REDACTED] and
12 [REDACTED]'s contact information for verification purposes. I told
13 him that [REDACTED]'s information was in my SF-86 roommate attachment
14 (we had been roommates in [REDACTED]), and that I would have to look up
15 [REDACTED]'s. SA Coder put me on hold for a few moments, presumably to
16 report this to PSS Halle. Then SA Coder came back on and told me
17 that this was fine as to [REDACTED], but that we would "hold off" on
18 [REDACTED]'s information at that time.

19 34. At the time of the 6/25/2009 conversation, I could
20 not figure out why SA Coder only read my written statement to
21 me without asking further questions. It seemed like a pointless
22 conversation at the time because no new information about the
23 incident was developed except for the obvious facts that I did
24 not use the marijuana or contribute money to its purchase.

25 35. In an email message to SA Coder with follow up
26 information, I suggested that he check with the polygraph
27 examiner or look at his report, because my Attachment 23 and the
28 incident were discussed in detail at the polygraph. My email to

1 SA Coder is attached as Exhibit 10. I didn't say more because
2 I know that as an applicant I am not supposed to tell a Special
3 Agent how to do his job. I did not anticipate that SA Coder
4 would do what he did, and I did not know that SA Coder was a two-
5 month Special Agent, or else I would have told him what to do.

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

7 36. I had two separate phone conversations with Special
8 Agent Coder. One on 6/25/2009, and one on 6/30/2009. The
9 6/30/2009 conversation included information on software
10 downloading I did when I was a minor and in college, which is
11 a paragraph on the first page of the FD-302. For some reason,
12 the FD-302 is backdated to 6/25/2009 even though it reports two
13 separate interviews about different subjects on different days.
14 The FD-302 also inaccurately states that the investigation was
15 only telephonic when most of the FD-302 is adapted from my emails
16 to SA Coder between 6/25/2009 and 6/30/2009.

17 37. On 6/30/2009, SA Coder contacted me again and said
18 that it turned out he did need [REDACTED]'s contact information. So I
19 sent an email message with my friend [REDACTED]'s contact information.
20 Neither this email message nor any reference to [REDACTED]'s
21 information appear in SA Coder's FD-302 or the file produced to
22 me under the Freedom of Information Act/Privacy Act.

23 38. The key take-home point here is that I never told
24 SA Coder any of the statements attributed to me in the first
25 paragraph on page two of his FD-302. He read my own SF-86
26 attachment to me, did not ask me the questions that his
27 FD-302 implies were asked, and then made up his own facts. SA
28 Coder's version of the facts was used to disqualify me. This is

1 unfortunate because SA Coder's FD-302 is a false investigative
2 record made in violation of 18 U.S.C. § 1001.²

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

4 39. "He stated that on his 2007 tax return, he neglected
5 to pay his state income tax for California. He stated that he
6 did this because he forgot that he was obligated to pay." I
7 never told SA Coder that I forgot that I was obligated to pay or
8 anything remotely similar to this. Like I told the PSI agent, I
9 told SA Coder that I lost track of the return due to work, and
10 the PSI form reflects this (it states I "overlooked it"). In
11 October 2008, when the return was due, I worked over 300 hours on
12 a five day court trial involving approximately \$1 million, for
13 which I was solely responsible. This is why I overlooked it.

14 40. "He stated that he has illegally downloaded commercial
15 computer application software" This paragraph is
16 from both our 6/25/2009 phone conversation and 6/30/2009 phone
17 conversation. The FD-302 could not have been written, dictated,
18 transcribed, and initialed on 6/25/2009 like it claims to be.
19 The FD-302 is therefore a false writing made in violation of 18
20 U.S.C. § 1001.

21 41. "He stated that there are no pending issues related to
22 the [REDACTED] interactive website the [sic] he developed,
23 and the improper reimbursement procedures." This issue was not
24 mentioned at all during either phone conversation. SA Coder
25 sent me questions on this issue by email after our 6/25/2009

26 _____
27 2 SA Coder is the subject of a pending complaint to the
28 Office of the Inspector General, which was referred to the FBI
Inspection Division on January 7, 2011. Assistant Director Lyons
and Unit Chief Sandra Bungo have not responded to my inquiries
about the status of this complaint.

1 phone conversation, and I answered them by email. To summarize,
2 I reimbursed myself for bona fide expenses from cash receipts
3 without providing an accounting. The subject did not come up
4 again and is not included in the suitability determination.

5 42. I have attached all of the pre-rejection emails I
6 exchanged with SA Coder as **Exhibit 11**. I note that the file
7 produced to me under FOIA does not contain any of these email
8 messages, even though the information is relevant and much of it
9 forms the basis for the FD-302.

10 **California and Federal Law, and Medical Marijuana**

11 43. As an experienced attorney licensed under California
12 law, I am qualified to give an authoritative professional opinion
13 of the legality of my actions in May 2008 under the law of my
14 State and the ethical rules applicable to attorneys in my State.
15 I am also admitted to practice in the U.S. District Court for the
16 Northern District of California, and therefore I am qualified to
17 give an opinion of Federal criminal law.

18 44. I note that attorney Edward M. Broussard is not
19 licensed to practice law in California. However, the Director of
20 the FBI is licensed to practice law in California and should have
21 been consulted instead of Mr. Broussard.

22 45. My professional opinion of the law of my State, ethical
23 rules applicable in my State, and the Federal criminal law
24 follows.

25 46. I did not commit any crime in the May 2008 incident. I
26 was simply in the same room and house as my two friends. I was
27 not a party to the transaction between [REDACTED] and [REDACTED].

28 47. I was not an aider, abettor, or accessory to any crime

1 that may have occurred in the May 2008 incident, and I excused
2 myself prior to any transaction or crime occurring.

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

6 49. Ethical duties of an attorney in California only arise
7 from an attorney-client relationship, not personal life conduct,
8 unless otherwise stated in the Rules of Professional Conduct. I
9 did not commit an ethical violation in the May 2008 incident,
10 and no attorney-client relationship was created. Thus, Mr.
11 Broussard's opinion that I acted unethically is wrong. I also
12 question the appropriateness of including his curbstone opinion
13 of law, ethics, and judgment in a factual investigative report.
14 See the Manual of Administrative Operations and Procedures at
15 10-17.11.2: "Do not include in details of report opinions or
16 conclusions of Special Agents or other employees drawn from
17 information gained by virtue of investigation."

18 50. Although there are rules of procedure and various
19 duties that arise from filing actions in Federal court, there
20 are no separate Federal ethical rules for attorneys--or for that
21 matter, any nationwide ethical rules that apply in my State.
22 Attorneys cannot be held to standards higher than the laws of the
23 States that have licensed them to practice.

24 51. As an attorney in California, I do have a general
25 duty to "uphold" the law and not commit felonies involving moral
26 turpitude. Upholding the law means, among other things, giving
27 full faith and credit to judgments and opinions of any court;
28 obeying the orders of any judge; not misleading a judge or jury

1 with a false statement of law; not claiming that a particular
2 law is invalid unless there is a non-frivolous argument to the
3 contrary, and not committing crimes that involve moral turpitude.

4 52. Attorneys in California are never disciplined for
5 minor violations of the law unless a more serious offense occurs
6 in combination. Attorneys in California are rarely disciplined
7 for even significant violations of the law, as long as they do
8 not involve moral turpitude. Attorneys in California are never
9 disciplined for conduct that may be unpalatable, but that is not
10 illegal or unethical. This is because an attorney's license is a
11 property right that may not be taken in whole or in part without
12 due process of law.

13 53. Although I regret the May 2008 incident, which was
14 three years ago when I was 27 years old, and I will not make
15 the same choices again, being present when a friend purchases
16 a small amount of marijuana is not an offense at all, much less
17 one involving moral turpitude. I could never be professionally
18 disciplined for this incident.

19 54. Moral turpitude means dishonesty or some other serious
20 offense. For example, the attorney-specific series of polygraph
21 questions that I was asked and successfully passed (e.g., "have
22 you ever overbilled a client?") would be offenses involving moral
23 turpitude under California law.

24 55. I am not a prosecutor or law enforcement officer, and
25 so while I have a general duty to "uphold" the law, I am not
26 required to "enforce" the law--or remove myself from unlawful
27 situations involving others.

28 56. Depending on the amount and context, the offense of

1 simple possession of marijuana in California is generally not
2 prosecuted in Los Angeles, California where the May 2008 incident
3 occurred, unless a more serious offense occurs in combination.
4 Rather, the offense is used to gain access to premises and
5 conduct full searches of persons and vehicles.

6 57. In May 2008, the offense of simple possession was
7 punishable by a statutory maximum \$100 fine, mandatory diversion,
8 and no jail time or even "booking." Health and Safety Code
9 § 11357(b). In other words, it was punished less severely than
10 a speeding ticket despite it being labeled a misdemeanor. The
11 penalty for simple possession has since been reduced to an
12 infraction (e.g., jaywalking), which is "de facto" how it had
13 been treated in May 2008 anyway. In any event, the State statute
14 of limitations on any crime committed by [REDACTED] in the May 2008
15 incident ran in May 2009 at the latest. No one was charged,
16 investigated, or otherwise.

17 58. I never had possession of any marijuana, money, or
18 anything else that was involved in the May 2008 incident.

19 59. I was not an applicant to the FBI or any other law
20 enforcement agency, or any prosecuting attorney's office, in May
21 2008 when the incident occurred.

22 60. Nevertheless, I freely admit that it was not a good
23 idea to even be present for the May 2008 incident. I certainly
24 am not going to repeat the behavior. But if I am going to be
25 judged, I want to be judged for the words that I actually say and
26 write, not the false version of the facts that someone else puts
27 in my mouth.

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62. To summarize, in May 2009 (age 28)--a year more recently than the May 2008 incident--I lost my job because I chose to comply with an ethical duty.

64. I chose to protect my clients at my own expense, and I disclosed my Phase II interview to my employer so that the employer could minimize the impact of my absence from the portion of the trial that might conflict with Phase II. Although I performed my role in the trial successfully, I was "laid off" in response to this disclosure of my FBI application and conditional appointment.

66. I soon learned that this attorney was the subject of a State Bar investigation for allegedly overbilling clients. I

1 was also asked to do unethical things. The attorney was also
2 illegally using valuable computer software. Because of this, I
3 quit for ethical reasons in September 2009 and took a lengthy
4 break from practicing law.

5 **CIA**

6 67. After the discontinuation of my FBI application in July
7 2009, I applied to the CIA. In August 2009, I was interviewed
8 for a Staff Operations Officer position. However, the recruiter
9 was very curious about how it is that I passed the FBI polygraph
10 examination but was later rejected. Two weeks after this
11 interview, I was non-selected from the CIA. This is because,
12 like the FBI, the CIA does not want an attorney who reportedly
13 negotiated a drug transaction in the recent past.

14 68. I only wish that if a single Analyst and a single
15 Special Agent were going to prejudge the case and decide to
16 disqualify me before the BI, I would have had the opportunity to
17 withdraw my FBI application to pursue opportunities with other
18 Federal agencies that serve the American people equally well.

19 **Alcohol Use**

20 69. In her suitability determination, PSS Halle quotes from
21 my SF-86 regarding my past alcohol use.

22 70. It is true that, like many young attorneys, I turned to
23 alcohol at one point in my career to relieve some of the stress
24 and pressures that I faced. I drank, but it was not to a level
25 of abuse. Case in point, I have never been warned or counseled
26 on the job, gotten a DUI, been hospitalized or treated for
27 alcohol abuse, or been charged with any alcohol-related offenses.

28 71. It is true that, from 2006-2008 (age 25-28), I

1 occasionally took mornings off and once or twice took a whole
2 day off, after drinking more than I should have the night
3 before. However, this was allowed at my law firm, which was not
4 a traditional "9 to 5." Unlike the support staff at my firm,
5 which had set hours and limited vacation, the attorneys were
6 allowed and encouraged to make their own schedules and could take
7 unlimited time off as long as billable hour requirements were
8 met. I did not have "sick leave." Instead, I had unlimited
9 vacation as long as I made my hours. I was never warned or
10 counseled about my attendance.

11 72. I significantly exceeded my hours requirements in all
12 three years I was at the firm, and I brought in a large amount of
13 money for my bosses. As noted in my SF-86 and PSI, I have never
14 been disciplined or warned for my performance, and I never drank
15 before important events or legal proceedings. I never missed
16 any deadlines or legal proceedings due to alcohol use. I also
17 made it a point to check in with the staff before taking any time
18 off. Contrary to PSS Halle's statements in her adjudicative
19 recommendation, alcohol only (mildly) affected my attendance, not
20 my work performance.

21 73. One day in September 2008 (age 28--two and a half years
22 ago), several months before I applied to the FBI in December
23 2008, I stopped drinking alcohol. Starting the following week,
24 I worked approximately 70 consecutive 12-20 hour days on a five
25 day court trial involving \$1 million, for which I was solely
26 responsible. My presentation of this trial without drinking
27 and with no ill effects proved to me that I don't need to drink
28 alcohol to relieve stress or for any other reason. This is why

1 I chose not to drink alcohol for fifteen months starting in
2 September 2008 and concluding in December 2009.

3 74. I now drink a completely reasonable amount of alcohol,
4 which again does not affect my work performance. My current
5 position is with a firm that generally does have a "9 to 5"
6 schedule, and I have not taken any time off due to drinking, nor
7 have I needed to.

8 75. Interviews with my former and current coworkers and
9 associates would indicate that I never had a negative history
10 with alcohol. If only my BI had been completed, alcohol
11 would probably never have been mentioned in the suitability
12 determination.

13 **Life Coach**

14 76. PSS Halle states in her determination that it is
15 "important to note" that I had been seeing a psychologist since
16 2005 for "personal development, life issues, and stress."

17 77. It is true that, from September 2005 (age 25) to
18 December 2009 (age 29), I consulted with psychologist [REDACTED]
19 [REDACTED], Ph.D. of [REDACTED], California as my counselor and life
20 coach.

21 78. First of all, the appropriate place to discuss
22 psychological assistance is with a physician in a Fitness For
23 Duty Examination. I discussed my life coach/counselor with the
24 physician who administered my FFDE and he concluded that my work
25 with her was harmless. Among other reasons, the issues for which
26 I sought assistance never interfered with my employment, and
27 this is noted in my FFD report prepared by [REDACTED], MD of
28 California Pacific Medical Center, San Francisco, CA and approved

1 by the FBI health services unit.

2 79. My self-referral to a counselor to optimize my life,
3 career, and personal relationships is not the type of issue that
4 should even have been mentioned in the suitability determination;
5 it is one more reason PSS Halle was prejudiced against me.
6 Evidently she believes that psychological assistance of any kind
7 is a disqualifying event. This is not the law.

8 I declare under penalty of perjury under the laws of the
9 State of California that the foregoing is true and correct.

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11 Date: May 1, 2011
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V.

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

-1-

1 I, [REDACTED] declare as follows:

2 1. I am over the age of 18 and I have personal knowledge of all matters stated
3 herein, except as to those matters stated on information and belief, in which case the matters
4 are stated to my best recollection and I believe them to be true. If called as a witness, I could
5 competently attest to same.

6 **BACKGROUND**

7 2. [REDACTED] and I have been friends for 10 years—since January 2000 when
8 we were second-year college students. We [REDACTED] We had the same college
9 major and took many classes together. We were roommates from [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] event in Los Angeles, CA.

13 4. In the evening of May 2, 2008, Mr. [REDACTED] accompanied me to our mutual friend
14 [REDACTED]'s house. I intended to obtain a small amount of marijuana (less than \$100) from [REDACTED] and
15 Mr. [REDACTED] and I both intended to visit with our friend [REDACTED]

16 5. [REDACTED] was not a drug dealer, but he did keep extra marijuana around to share with
17 friends. I know that [REDACTED] has a Medical Marijuana license, but I do not know what the terms of
18 [REDACTED]'s license are.

19 6. Mr. [REDACTED] advised me on the way over to [REDACTED]'s house 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]'s price and what I was willing to offer [REDACTED] but he was not taken seriously at all. Mr.
25 [REDACTED] was, at worst, comic relief to me and [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 came to our agreement and exchanged the marijuana.

28 File #67B-HQ-[REDACTED]

Declaration of [REDACTED]

1 8. Mr. [REDACTED] did not use any of the marijuana. Mr. [REDACTED] did not contribute in
2 any fashion to the purchase, 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 he is sometimes too cautious for his own good. 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 purchase. 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 purchase price 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 purchase.

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 under the laws of the State of California that the
22 foregoing is true and correct.

23 Date: 11/20/10

[REDACTED]

28 File #67B-HQ-[REDACTED]

Declaration of [REDACTED]

1 KEY LAW

2 A. Required Scope of Investigation

3 "The importance of selecting applicants for the Special
4 Agent position cannot be overstated. It is important to the FBI's
5 mission that the best qualified individuals without regard to
6 race, religion, color, national origin, age, gender, physical or
7 mental disability, sexual orientation, or other nonmerit factors
8 are hired for the Special Agent position based on a fair and
9 legally valid personnel selection system." MIOG at § 67-6.1
10 (emphasis added).

11 "No work is more important than properly testing,
12 interviewing, evaluating, and investigating applicants for
13 positions with the Bureau." MIOG at § 67-3.1 (emphasis added).

14 "Interviews and investigations must be exhaustive and
15 designed to uncover any information bearing on an applicant's
16 suitability for employment with this Bureau." *Id.* (emphasis
17 added).

18 "Investigation must be painstakingly exact, fair, and
19 unbiased." MIOG at § 67-9.5(4) (emphasis added).

20 A Special Agent conducting an applicant investigation
21 "should be persistent in his/her effort to pursue every lead to
22 its logical conclusion." MIOG at § 67-9.5(7) (emphasis added).

23 "Ascertain facts upon which derogatory information is
24 predicated and attempt to determine exact nature of allegations
25 made about the applicant and veracity of same. Attempts should
26 be made to verify or disprove allegations through additional
27 interviews or records checks." MIOG at § 67-9.5(8) (emphasis
28 added).

1 "Reports should show unbiased and complete inquiry." *Id.* at
2 § 67-9.5(9) (emphasis added).

3 **B. Drug Policy**

4 The FBI drug policy is stated at section 67-2.7.1 and
5 following sections. An applicant will be disqualified if he or
6 she has used marijuana in the past three years or more than 15
7 times in his or her life.

8 Of note, in the 1998 version, MIOG stated that the Special
9 Agent Applicant Unit is the authority in cases in which there
10 is reported involvement in a drug purchase: "Determination
11 concerning any other drug-related situations/usage (which would
12 include the purchase/selling of any illegal drug, illegal use of
13 any drug while employed in any law enforcement or prosecutorial
14 position, or while employed in a position which carries with
15 it a high level of responsibility or public trust) or unusual
16 circumstances are to be referred to SAAU for decision and
17 notification." MIOG § 67-3.2.3(5)(d).

18 **ARGUMENT**

19 **A. The Polygraph Report Establishes the True Facts.**

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

28 On the actual test, SA [REDACTED] asked me the drug-related

1 relevant polygraph question, which was substantially "have you
2 disclosed all of the information you have concerning your use
3 of illegal drugs?" I answered yes, and when I passed the exam
4 it was officially determined that I was telling the truth.
5 The true facts are that I was "present in 2008 when a friend
6 purchased less than \$100 of marijuana," and that I had no other
7 involvement.

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

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

23 Given that I have offered to take a supplemental polygraph
24 examination regarding the veracity of the facts in this appeal,¹
25 I do not expect SA Coder to dispute the fact that he read from my
26 own written statement and did not ask the questions that his

27 1 Offer made in my original Office of Professional
28 Responsibility complaint, filed 1/3/2010. The OPR complaint was
ignored, prompting me to file a complaint with OIG.

FD-302 implies were 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 Director or the Board is whether the fourth Special Agent, SA Coder, has a special ability to develop negative information that the other three agents involved in my case do not. The answer is no, SA Coder does not have any special ability; in this case, he simply made up the information.

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. [REDACTED] has filed a declaration in support of this appeal in which he clearly states that I was not involved in the transaction. The following table shows SA Coder's false 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 hase 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

1 transaction. Neither I nor [REDACTED] considered Mr. [REDACTED] to be
2 involved." "No one with any knowledge of drugs would consider
3 Mr. [REDACTED] to have been involved in this transaction, and he
4 should have asked me before reporting this" (emphasis added).
5 "Mr. [REDACTED] was, at worst, comic relief to me and [REDACTED] due to
6 Mr. [REDACTED]'s ignorance of drugs" (emphasis added). "Mr. [REDACTED]
7 excused himself and was not present when [REDACTED] and I actually came
8 to our agreement and exchanged the marijuana" (emphasis added).

9 Mr. [REDACTED]'s declaration conclusively establishes the true
10 facts. It should be noted that under Federal law, Mr. [REDACTED]
11 is taking a risk by signing a declaration under penalty of
12 perjury stating that he illegally purchased marijuana. His
13 doing so demonstrates his sincerity and his willingness to
14 support a friend who has been wronged. As for Mr. [REDACTED], his
15 willingness to speak with investigators despite illegally selling
16 marijuana in violation of Federal law also demonstrates his
17 support for "The Truth."

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

19 The rule is that the Special Agent Applicant Unit is the
20 authority in situations in which an applicant is reported to be
21 involved in a drug transaction, or other unusual circumstances.
22 MIOG § 67-3.2.3(5)(d).
23

24 Here, SAAU reviewed the polygraph report and SAAU approved
25 the version of the facts I reported at the polygraph and in
26 my written application. (The report references my written
27 application). The "CONTINUE" directive is circled by the
28 reviewer, indicating that SAAU decided to continue my processing.

1 This explains why SA Coder wrote his FD-302 the way he did--my
2 written statement in the SF-86 was not enough to disqualify me,
3 so SA Coder had to report facts that went above and beyond my
4 SF-86 in order to ensure that I was disqualified.

5 Because SAAU was aware of this incident and approved my
6 processing, and because SACU intake analyst Kimberly Ann Maggi
7 reviewed and approved this incident, the decision was made before
8 my file went to SACU for the BI and it was inappropriate to
9 revisit the incident.

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

11 The rule is that possession of marijuana is unlawful.

12 Here, although I was present, I did not have possession of
13 any marijuana or money in this incident. I did not use any of
14 the drug. In other words, I committed no crime.

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

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

23 No one was charged or convicted of any crime arising out
24 of this incident. Pursuant to Office of Personnel Management
25 suitability criteria, I question the propriety of considering
26 conduct that is not "use" of a drug and that did not result
27 in a criminal conviction. PSS Halle was clearly aware of this
28 problem, because the beginning of her determination (Exhibit

1 3) says the basis for her adjudicative recommendation is "drug
2 use," while the end of her report states the basis is "criminal
3 conduct."

4 On a side note, PSS Halle's report is defamatory per se
5 because it accuses me of drug use as well as a crime I did not
6 commit.

7 **E. The True Facts are not an Ethical Violation Under**
8 **California Law.**

9 The California Rules of Professional Conduct establish the
10 ethical duties of California-licensed attorneys. There are no
11 comparable Federal rules.

12 Rule 3-210 of the Rules of Professional Conduct states that
13 an attorney may not advise a violation of law unless there is a
14 non-frivolous argument that the law is invalid.

15 Here, I told [REDACTED] that I could not act as his attorney in
16 this transaction. As [REDACTED] states in his declaration, I did not
17 act as his attorney or representative, and I was not involved and
18 did not assist in any aspect of the transaction. I complied with
19 Rule 3-210.

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

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

27 [REDACTED]
28 [REDACTED]. [REDACTED]

1 [REDACTED]. Contrary to the OGC attorney's opinion and PSS Halle's
2 adjudicative recommendation, I was not acting as an attorney by
3 merely being present.

4 The rule is that an attorney has a general duty to "uphold"
5 the law and not commit felonies involving moral turpitude. Moral
6 turpitude generally means dishonesty or serious crimes.

7 I am sorry this incident ever happened. However, I must
8 insist that being present when a friend purchases less than \$100
9 of marijuana is not an ethical violation. I also take issue with
10 being informally judged by an attorney who is not licensed to
11 practice in my State. What happened here is that I was held to a
12 higher standard than the actual law or ethical rules of my State,
13 based on SA Coder's version of the facts, with no opportunity to
14 provide a response.

15 **F. An Investigation in Accordance with the FBI Manual Would**
16 **Have Developed the True Facts.**

17 The rule is that an applicant investigation must be
18 exacting, fair, and unbiased.

19 The rule is that a Special Agent conducting an applicant
20 investigation should be persistent in his/her effort to pursue
21 every lead to its logical conclusion.

22 The rule is that derogatory information should be fully
23 developed and reported in detail. Ascertain facts on which
24 derogatory information is predicated and follow through
25 in questioning to obtain such facts, including additional
26 interviews.

27 The rule is that investigative reports should show unbiased
28 and complete inquiry.

1 Here, in addition to making false statements as discussed in
2 my declaration, SA Coder failed to conduct his investigations of
3 6/25/2009 and 6/30/2009 in accordance with the FBI manual.

4 SA Coder knew there were additional leads to pursue, because
5 he twice asked me for [REDACTED] and [REDACTED]'s contact information. I
6 provided SA Coder with [REDACTED] and [REDACTED]'s contact information as
7 requested. The logical conclusion of SA Coder asking for and
8 being provided two witnesses to a drug-related incident would
9 be contacting the witnesses to see what they had to say. An
10 unbiased and complete inquiry would include simply calling [REDACTED]
11 and [REDACTED] to verify the information I provided. As the purchaser
12 and seller, [REDACTED] and [REDACTED] were clearly in the best position to
13 judge whether I was involved.

14 By failing to follow these leads to their logical
15 conclusion, SA Coder exhibited bias, unfairness, and prejudice
16 by manipulating his investigation and other FBI personnel.
17 By manipulating his investigation with wilful blindness to
18 the information [REDACTED] and [REDACTED] would have provided, SA Coder
19 concealed the true facts and the specific factual basis of my
20 conduct from the FBI.

21 Had SA Coder pursued the leads I gave him, the investigation
22 would have revealed that I was not involved in the transaction
23 and that I never should have reported the incident, as [REDACTED] has
24 shown in his declaration. At worst, I misjudged my involvement
25 when I reported this incident in my SF-86 in my effort to be
26 forthcoming with the FBI.

27 I find it difficult to believe that the FBI has not
28 previously been faced with a situation in which an applicant

1 over-reported negative information that was later cleared up in
2 the investigation. I am aware of one applicant who reported
3 drinking tea in Amsterdam that may or may not have been laced
4 with marijuana. According to former FBI polygraph examiner
5 [REDACTED], with whom I consulted about this appeal,
6 that applicant was reportedly reprocessed after the Director
7 intervened.

8 The problem is that here, because SA Coder conducted an
9 incomplete investigation, did not fully develop the facts, and
10 concealed witnesses from the FBI, I never had a full and fair
11 opportunity to have the negative information resolved.

12 **G. Supplemental Declaration**

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

16 I, [REDACTED], declare:

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

19 A. No.

20 Q. Were you involved in the decision to buy the marijuana?

21 A. No.

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

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

25 Q. Did you negotiate the purchase?

26 A. No.

27 Q. Did you assist in the negotiation of the purchase?

28 A. No.

1 Q. Did you act as a representative or attorney for either
2 party?

3 A. No.

4 I declare under penalty of perjury under the laws of the
5 State of California that the foregoing is true and correct.

6 [REDACTED]
7 Date: 5/1/2011

8 **REQUESTED RELIEF**

9 PSS Halle indicates in her email message to Edward M.
10 Broussard of OGC that this incident was all that stood between
11 me and the full background investigation that I was going to
12 receive: "I was going through the process of scoping the case
13 so that leads could be sent out and his BI could get started,
14 when I came across an attachment he included in the SF-86 about
15 Marijuana."

16 Because the suitability determination and discontinuation
17 were based on (1) false information reported by a Special Agent
18 who contradicts three other Special Agents, the polygraph
19 examination, witness [REDACTED], and the applicant, and who
20 failed to conduct his investigation in accordance with the FBI
21 manual; and (2) an inappropriate and wrong opinion of law, the
22 decisions should be reversed and my application reinstated for
23 continued processing.

24 Respectfully submitted by:

25 [REDACTED]
26 5/1/2011

27 Date

28 [REDACTED]
Applicant

EXHIBIT 1

To: BROUSSARD, EDWARD M. (OGC) (FBI)
Subject: Applicant question
Importance: High

UNCLASSIFIED
NON-RECORD

Hi Mr. Broussard,

I have a question for you in-regards to a Special Agent Applicant. 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. I discussed this with my Supervisor and Program Manager and they thought it best to email you. This applicant is a lawyer so I want to make sure that we could potentially discontinue him for this and not have him come back to appeal it. This is going to be word for word what he wrote.....

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

Would we be able to discontinue him for "In the last 7 years, have you been involved in the illegal possession, purchase, manufacture, trafficking, production, transfer, shipping, receiving, handling, or sale of any controlled substance including prescription drugs?" (question 23C on SF-86)

Thanks, hope you are having a great day!

Abby M. Halle

Personnel Security Specialist
Special Agent Clearance Unit
202-324-8328
JEH - 10130

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

EXHIBIT 2

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE
To: Security

Date: 06/30/2009

From: Security
Initial Clearance Section
Special Agent Applicant Unit, JEH 10130
Contact: Abby M. Halle, 202-324-8328

Approved By: Brice Montchell *no/see*
Kosh Valrie R *W*

Drafted By: Halle Abby M:amh

Case ID #: 67B-HQ- [REDACTED] -lc

Title: [REDACTED]
SPECIAL AGENT
ADJUDICATIVE RECOMMENDATION

Synopsis: To provide a synopsis of unfavorable information developed during the background investigation of captioned applicant and to recommend that he be discontinued due to the applicant's drug use.

Details: The following unfavorable information was developed prior to completion of a full background investigation concerning captioned applicant's drug use.

The applicant was afforded the opportunity to be processed for the Special Agent position. He completed his SF-86 on 05/17/2009 and his PSI on 05/28/2009.

It should be noted that the applicant is currently a member of the California Bar Association, license number [REDACTED].

The applicant stated in an attachment to his SF-86 that:

'in May 2008, while visiting Los Angeles for his [REDACTED] the applicant stayed with his close friend (P-1) [REDACTED]. At one point, (P-1) [REDACTED] suggested that they go to the home of one of (P-1) [REDACTED] friends (and an acquaintance of the applicant's from college), (P-1) [REDACTED]. The purpose of the visit was for (P-1) [REDACTED] to purchase a small amount of marijuana from [REDACTED], and to visit with him. [REDACTED] was not a drug dealer 'per se', but he did keep extra marijuana around and occasionally sold it to friends and acquaintances. At some point (P-1) [REDACTED] commented about the price and wanting to get a deal from [REDACTED]. The applicant, half-jokingly

To: Security From: Security
Re: 67B-HQ- , 06/30/2009

offered (P-1) a few negotiating tips based on his experience in mediation and settlements of lawsuits. (P-1) said he would like it if I negotiated the price with as (P-1) representative, because (P-1) didn't want to deal with 's eccentric behavior concerning prices, and the drama that goes with it. So when (P-1) and I arrived at 's, I jumped in and started saying things like 'my client is willing to offer \$ ____'. This was somewhat funny to (P-1) and (P-1) and 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 directly agreed on the terms.'

The applicant was contacted by Special Agent Graham Coder, in regards to the issue above. The applicant confirmed that:

'in May 2008, he traveled with a friend to another friend's house for the purpose of buying marijuana. He stated that he assisted in negotiating the price of the marijuana purchase between the friends. He stated that he acted as a 'representative' of the buyer of the marijuana to the seller. He said that he was involved in the decision to travel to the house to buy the drugs, and in the negotiation of the purchase price, but that the deal was completed when the purchaser and seller directly agreed on the terms.'

Upon consulting with the Office of the General Counsel (OGC), on 06/24/2009, it was recommended that we discontinue the applicant based on the drug policy with recency (1) and context (2) as aggravating factors.

1) The behavior was recent-a year and one month ago.

2) The applicant is a lawyer and was acting as a lawyer when he engaged in the behavior. Per OGC, 'As a lawyer, he has been admitted to the state bar and therefore is a sworn officer of the court, with all the legal and ethical obligations his state bar imposes on him. Whether he bought/used the drugs himself is irrelevant. He was a party to the sale of drugs and he allowed himself to be a party/witness to a criminal act which shows poor judgement and a disregard for his legal/ethical obligations as a lawyer.'

To: Security From: Security
Re: 67B-HQ-[REDACTED], 06/30/2009

The applicant also disclosed, in an attachment to his SF-86, that alcohol has had a negative impact on his work. The applicant stated the following:

'From 2006-2008, alcohol did have a negative impact on the applicant's work performance, because when he was hung over after too much drinking, he could not work as many hours in a day as usual and the applicant became somewhat irritable. The nature of the applicant's job is that hours are flexible as long as he got the work done, so when the applicant would occasionally need to take a morning or even a whole day off (estimating twice per month), he could do so unless there was an important event or deadline. The applicant doesn't think he ever missed an important work event or deadline due to drinking, because the applicant was able to plan those types of things ahead. As for personal relationships, alcohol did have a negative impact because it created distance and caused the applicant to feel sad even when he should have felt happy. The applicant believes that he was drinking to escape the pressure and demands of his career. He has never experienced law enforcement intervention as a result of or relating to alcohol. The applicant gave up drinking in September 2008.'

It should be noted that the applicant disclosed, in his PSI, that from September 2005 to Present he has been seeing a psychologist for 'personal development/life issues/stress.'

Based on the foregoing, it is recommended that captioned applicant be discontinued for the position for which he is being considered. This recommendation is based on the applicant's criminal conduct. As a result, the applicant is deemed to be unsuitable for FBI employment.

To: Security From: Security
Re: 67B-HQ- [REDACTED], 06/30/2009

LEAD(s):

Set Lead 1: (Action)

SECURITY

AT WASHINGTON, DC

That captioned applicant's processing be discontinued
for the position for which he is being considered.

♦♦

EXHIBIT 3

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/25/2009

On June 25, 2009, [REDACTED], telephone number [REDACTED], was interviewed telephonically by SA Grahm L. Coder. [REDACTED] is currently an applicant for an employment position with the Federal Bureau of Investigation.

He stated that the comment he made during his PSI interview during the financial records/obligations section regarding "various parking enforcement agencies" related to various parking tickets (non moving traffic violations) received during his lifetime. To the best of his knowledge, he has no outstanding tickets at this time.

He stated that on his 2007 tax return, he neglected to pay his state income tax for California. He stated that he did this because he forgot that he was obligated to pay. The amount of federal taxes withheld by his employer was enough to cover the amount of money owed to California, but he was still penalized for a late payment with interest in the amount of approximately \$66. He has only recently received the notification and will pay the debt before the due date.

His stated that his 2008 taxes are current. He legally extended his filing date until October of 2009. He extended in accordance with the Internal Revenue Service (IRS) form 4868.

He stated that he has illegally downloaded commercial computer application software including Adobe PHOTOSHOP, desktop publisher, and multiple others that he can not remember. From his teenage years until now, he has downloaded approximately 20 programs along with multiple "mp3" music files, music videos, and movies.

He is a licensed member of the California Bar Association. His license number is [REDACTED]. He became licensed in [REDACTED]. He stated that he is a good standing member of the California Bar association and has no disciplinary actions taken against him.

He stated that there are no pending issues related to the [REDACTED] interactive website the he developed, and the improper reimbursement procedures.

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

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

by SA Grahm L. Coder:glc *glc*

67B-HQ-[REDACTED]

Continuation of FD-302 of [REDACTED]

, On 06/25/2009 , Page 2

He confirmed that in May 2008, he traveled with a friend to another friend's house for the purpose of buying marijuana. He stated that he assisted in negotiating the price of the marijuana purchase between the friends. He stated that he acted as a "representative" of the buyer of the marijuana to the seller. He said that he was involved in the decision to travel to the house to buy the drugs, and in the negotiation of the purchase price, but that the deal was completed when the purchaser and seller "directly agreed on the terms".

He confirmed that he experimented with marijuana from January 2000 through July 2002. He stated that in 2002-2004 he "tried marijuana" while at [REDACTED] events in Los Angeles, but that he did it while he was intoxicated and does not remember the amount of times that he took marijuana, but that it he has taken it as recently as 2004.

EXHIBIT 4

Attachment 23. to SF-86: Illegal drugs

[REDACTED] [REDACTED]

#1 In May 2008, while visiting Los Angeles for my [REDACTED], I stayed with my close friend [REDACTED] (see roommate attachment, #3). At one point, [REDACTED] suggested that we go to the home of one of [REDACTED]'s friends (and an acquaintance of mine from college), [REDACTED]. The purpose of the visit was for [REDACTED] to purchase a small amount of marijuana from [REDACTED], and to visit with [REDACTED]. [REDACTED] was not a drug dealer per se, but he did keep extra marijuana around and occasionally sold it to friends and acquaintances. At some point [REDACTED] commented about the price and wanting to get a deal from [REDACTED]. I half-jokingly offered [REDACTED] a few negotiating tips based on my experience in mediation and settlement of lawsuits. [REDACTED] said he would like it if I negotiated the price with [REDACTED] as [REDACTED]'s representative, because [REDACTED] didn't want to deal with [REDACTED]'s eccentric behavior concerning prices, and the drama that goes with it. So when [REDACTED] 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 [REDACTED], and [REDACTED] didn't take it seriously because I knew nothing about drugs or their prices, or how to handle a drug purchase. [REDACTED] 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 school-sponsored European tour in July 2002, I experimented with marijuana perhaps 6-8 times. In 2002, 2003, and/or 2004, I attended [REDACTED] events in Los Angeles, and I believe I tried marijuana one more time (I was drinking excessively at those events and do not specifically recall the year, except that the latest it possibly could have been was 2004 and more likely it was 2002).

EXHIBIT 5

(86 Review) 5/18/2009.

Continuation 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 attached a statement saying that he will be let laid-off 5/29/09 on suitable terms but the reason is because office found out he is pursuing a career with FBI.

PAGE 14 Item 23 Illegal Drug Activity: in May 2008 applicant ~~accompanied~~ 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 flaw. At the end of statement applicant refers to an incident disclosed during YH II interview.

EXHIBIT 6

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.
---	---

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

EXHIBIT 7

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. 1/2000	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 _____

EXHIBIT 8

FEDERAL BUREAU OF INVESTIGATION
POLYGRAPH REPORT

Benson

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

Date of Report 06/09/2009	Date of Examination 06/09/2009	Case ID # 67B-HQ- <i>5</i>
Field Office/Agency Requesting Examination FBIHQ		
Authorizing Official Director, FBI		Date Authorized 03/01/1994
Examinee's Name (Last, First, Middle) [REDACTED]	Date of Birth (mm/dd/yyyy) [REDACTED]	SSN (xxx-xx-xxxx) [REDACTED]
Case Title: [REDACTED]		
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)

On June 9, 2009, the applicant, [REDACTED], came to the San Francisco 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)

Examiner's Name SA [REDACTED] *RLG*

CONTINUE/DISCONTINUE
INITIALS: *W* DATE: 6/12/09
CODE: SAAU

(H)



The results of Suitability Series I were deemed to be not indicative of deception.

Applicant was then given Security Series II, consisting of the following relevant questions:

Security Series II:

(H)



The results of Security Series II were deemed to be not indicative of deception.

EXHIBIT 9

- 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 Grahm 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 San Francisco 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 Grahm L. Coder:glc **SAMPLE**

67B-HQ-[REDACTED]

Continuation of FD-302 of [REDACTED]

, On 06/25/2009 , Page 2

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 California income 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.

EXHIBIT 10

Subject: Background information

From: [REDACTED]

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

To: grahm.coder@ic.fbi.gov

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 [REDACTED] [REDACTED] [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] [REDACTED] [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. The [REDACTED] [REDACTED] [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. The rental 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 received the original check in the mail by [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 [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 California income tax.

When we spoke, I said that I had recently received a notice of penalty and interest due for the late filing of my 2007 California income tax return, and that I still had some time to pay the penalty. 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 separate cover. If I receive another notice, past experience with the California Franchise Tax Board suggests it will be of the type that advises to ignore the notice if a payment has been made. The California Franchise Tax Board may be reached at P.O. Box 942867, Sacramento, CA 94267-0011.

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 in California.

I will provide a copy of my license under separate cover. My license number is [REDACTED], issued [REDACTED] by the State Bar of California. The State Bar may be reached at 180 Howard St., San Francisco, CA 94103 and membership may be verified online at <http://calbar.ca.gov>.

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]

EXHIBIT 11

Subject: Follow up items for FBI app.

From: "Coder, Grahm L." <Grahm.Coder@ic.fbi.gov>

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

To: [REDACTED]

[REDACTED]

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 the state of California, please fax or scan a copy of the statement at this email, or at 202-324-7444
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 in California, 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. D [REDACTED] d improper reimbursement procedures that you performed while acting as the [REDACTED]. You then mentioned that you made a donation back to the organization. How [REDACTED] the name of the foundation that we might confirm the donation. Please also provide the details regarding the mitigation that you made [REDACTED] to. Was there an official action taken against you? Was there any allegations against you? Does the [REDACTED] know about the improper reimbursements? Please be very detailed in your description. Please include da [REDACTED], 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." <Graham.Coder@ic.fbi.gov>

Hi Graham,

Please see interlineations after each requested item.

Best,

Co [REDACTED] rahm L. wrote:

[REDACTED],
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 the state of California, please fax or scan a copy of the statement at this email, or at 202-324-7444

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.

3. I was able to verify your BAR association membership in California, 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 imp [REDACTED] performed while acting as [REDACTED]. You then mentioned that [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 action [REDACTED]nst you? Was there any allegations against you? Does the [REDACTED] know about the improper reimbursements? Please be ver [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] nc.

[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, in (estimate) February 2001, the check portion of the reimbursement was approved to be used to reimburse me for web hosting charges. We had a new [REDACTED]

If there is any way this can be done, I would respectfully request that Mr. [REDACTED] only be asked to confirm the donation rather than advised why I made the donation. Mr. [REDACTED] was a mentor [REDACTED] me in my decision to go to law school, and it would be extremely embarrassing to me. However, [REDACTED] the 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: grahm.coder@ic.fbi.gov

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,

[REDACTED]

Subject: Contact information

From: "

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

To: grahm.coder@ic fbi.gov

Hi Grahm,

's contact information is:

EXHIBIT 12

Attachment 13A. to SF-86: Employment information

[REDACTED] [REDACTED]

#1 This explains my reason for being laid off.

I took and passed Phase I in January 2009. At that time, my boss and I had a jury trial set for January 2009, which was then moved to the end of March 2009. My FBI Phase II invitation came in late March 2009, for an interview in the week of April 27th. The trial was estimated to last 12-13 days, and trial is held four days per week in the Department we were in. There was a chance the trial would be moved again. In other words, it was possible that my FBI interview would conflict with the trial, but it was not likely enough to reschedule the interview.

Normally, I would not disclose future employment plans to an employer, specifically because of the risk of being fired or laid off. In this case, however, I was the one working up the lawsuit and I was going to have a significant role at trial. I had an ethical duty to our clients to advise my superiors of the possible conflict so that appropriate arrangements could be made if I were not available when needed.

When I was deciding how to phrase this disclosure, I asked for advice from a very experienced paralegal at our office, [REDACTED]. She said that my supervisors knew about my FBI application, as did some of the office staff. It turns out that my legal secretary [REDACTED] may have disclosed my application to our office manager, because I had talked with her in confidence just before the Phase I test about my possible career change and future paths I was looking at including the FBI. One objective was to give her as much notice as possible of my eventual departure, whether to the FBI or otherwise, in the event the firm decided to let her go.

In any event, soon after getting the Phase II invitation, I advised my supervisors about the possible conflict with the trial, and both indicated that they were aware of my FBI application because the staff had been talking about it.

The trial ended up going from 4/1/09-4/30/09, and it did conflict with my Phase II trip, which was 4/30/09-5/1/09. Because everyone knew about the Phase II interview at that point, people were asking about the result and I saw no further damage in saying I passed. After that, the partners met several times and decided that with the conclusion of the trial, other cases being on hold, and with my future plans being common knowledge, the timing was right to lay me off effective 5/29/09. I am leaving on amicable terms.

#2 Over a years-long period, I did computer consulting for my father's small company. I would classify the consulting as self-employment rather than employment, because I received 1099's.