



Complainant

United States of America
Department of Justice

Office of the Inspector General



Complainant,

v.

GRAHM L. CODER;
CANDICE M. WILL;
MARK A. GANT;
MONTCHELL C. BRICE;
ABBY M. HALLE;

Defendants.

Case No. _____

VERIFIED COMPLAINT

Glenn A. Fine
Inspector General

Complaint Filed:
December 13, 2010

INTRODUCTION

1. The purpose of this complaint is to:

A. Rectify criminal or dishonest conduct by a Special Agent in the Federal Bureau of Investigation, a component of the Department of Justice.

B. Address misconduct by other FBI personnel who contributed to, magnified, knew or should have known of, or were wilfully blind to the Special Agent's criminal or dishonest conduct, even when put on actual notice by Complainant.

COMPLAINANT

2. [REDACTED] [DOB [REDACTED]] ("Complainant") is a former applicant to the FBI and to the Central Intelligence Agency.

SUMMARY

3. The underlying offenses by the Special Agent described in para. 1.A. above caused the rescission of Complainant's Conditional Appointment to the office of Special Agent after Complainant had passed the pre-employment polygraph examination and been referred to the Special Agent Clearance Unit for his background investigation. The underlying offenses appear to have caused the discontinuation of Complainant's application to the CIA for an intelligence position for which Complainant had been interviewed for further consideration.

4. The misconduct by other personnel described in para. 1.B. above contributed to the underlying offenses, as well as the resulting harm. For example, Complainant's original complaint to the FBI Office of Professional Responsibility,

which was supported by two declarations under penalty of perjury and documentary evidence, was completely ignored. This caused additional damage to the Department of Justice and the FBI by allowing a Special Agent who could potentially be convicted of a felony to remain in his position unchallenged. The Special Agent continues to investigate matters of national security and/or testify in criminal trials, as if nothing wrong had happened.

JURISDICTION

5. The Inspector General has jurisdiction over the fraud, abuse, or misconduct of any employee of the Department of Justice, unless the allegations concern a Department attorney's misuse of authority to litigate, investigate, or provide legal advice. This Verified Complaint does not allege misconduct by Department attorneys at this time.

RELIEF REQUESTED

6. Complainant requests that the Inspector General investigate this matter and, as appropriate, refer personnel for discipline or otherwise bring them to justice.

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DEFENDANTS

7. The following table, ordered by gravity of offense, lists the personnel who are the subject of this Verified Complaint and whom Complainant contends committed the offenses indicated:

Count	Rank/Grade	Name	Offense/Summary
1.	Special Agent	GRAHM L. CODER	18 U.S.C. § 1001(a)(2) No person shall make a false, fictitious, or fraudulent statement or representation of material fact to the United States of America.
2.	Special Agent	GRAHM L. CODER	18 U.S.C. § 1001(a) (1) No person shall falsify, conceal, or cover up a material fact from the United States of America.
3.	Special Agent	GRAHM L. CODER	18 U.S.C § 1001(a)(3) No person shall make a false writing or document, knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.
4.	Special Agent	GRAHM L. CODER	18 U.S.C § 1001(a)(3) No person shall use a false writing or document, knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Count	Rank/Grade	Name	Offense/Summary
5.	Special Agent	GRAHM L. CODER	A Special Agent in the FBI shall not make a false statement of any fact, material or otherwise, or omit any statements necessary to make the statements made not misleading, when communicating directly or indirectly with an attorney of the FBI's Office of General Counsel.
6.	Assistant Director	CANDICE M. WILL	<p>Wilfully suppressing evidence of serious misconduct of FBI employees from the Inspector General and the FBI Inspection Division.</p> <p>In the alternative, negligently supervising her subordinates in the Office of Professional Responsibility in the handling of Complainant's thirty page complaint and supporting evidence dated January 3, 2010, and supplemental complaint and evidence dated January 23, 2010, alleging that Special Agent Graham L. Coder committed three counts of serious misconduct, which are substantially identical to Counts One through Five above.</p>
5.	Personnel Security Specialist	ABBY M. HALLE	Manipulation of the Office of General Counsel of the FBI.
7.	Supervisory Special Agent	MARK A. GANT	Failure to present Complainant's Applicant Appeal of February 7, 2010 to the review board responsible for deciding applicant appeals.

Count	Rank/Grade	Name	Offense/Summary
8.	Acting Unit Chief	MONTCHELL C. BRICE	Failure to report allegations of serious misconduct of a subordinate, of which he was apprised in a series of increasingly detailed letters from Complainant over a three month period.
9.	Unknown	Unknown	Violation of the Merit System by placing Complainant's application in a "reject pile" at the Special Agent Clearance Unit.

ADDITIONAL INVOLVED PERSONNEL

8. It is not contended at this time that the following personnel committed misconduct. However, their actions provide context for evaluating those of the Defendants in the above Counts, as indicated in the following table:

Count	Rank/Grade	Name	Summary
	Program Manager	KEVIN BENSON	Program Manager Benson disobeyed an order from Acting Unit Chief Montchell C. Brice to respond to Complainant's letters asking how to appeal the suitability determination.
	Attorney	EDWARD M. BROUSSARD	Mr. Broussard was manipulated by PSS Halle and SA Coder into giving wrong opinions of law and "recommending" Complainant's disqualification.

STATEMENT OF FACTS

A. Inside the FBI Application Process

(1) The Job

9. The Special Agent position in the FBI is considered to be the most exclusive in law enforcement. For applicants such as Complainant, an experienced litigation attorney, it is the best fit yet is the most elusive of all government positions.

(2) The Online Application

10. At the time Complainant filed his application, the FBI application process began with an online application at <http://www.fbijobs.gov> (since moved to <http://www.usajobs.gov>). The online application seeks a variety of basic information about the applicant, such as compliance with the FBI drug policy, lack of felony convictions, and other basic qualifications.

11. If the applicant reports a felony conviction or drug use outside of acceptable parameters, or a range of other disqualifiers, the applicant is disqualified.

12. Although the FBI reports receiving some 80,000 applications per year for approximately 800-900 Special Agent positions, the vast majority of applicants are disqualified with the online application.

13. If an applicant's basic qualifications are preliminarily competitive, the applicant is invited to take the Phase I written test. Approximately 10,000-12,000 applicants took the Phase I test in FY2009.

(3) The Phase I Test

14. The Phase I written test consists of three parts: (1) logical reasoning, (2) biodata inventory, and (3) situational judgment. The contents are subject to a Non-Disclosure Agreement.

15. If the applicant scores competitively on the Phase I test, the applicant's online application and résumé are submitted to FBI Headquarters for consideration for Phase II. About half of Phase I applicants do not attain a competitive score, and each Field Office has an allocation of spots, leaving approximately 5,000 applicants submitted for Phase II consideration in FY2009. The Human Resources Division at Headquarters determines who is competitive enough to receive an invitation to Phase II.

16. Of the applicants considered for Phase II, a portion are selected, perhaps 3,500 applicants for FY2009.

(4) The Phase II Interview and Written Exercise

17. Phase II consists of a lengthy behavioral interview as well as a written exercise designed to test the applicant's ability to draw inferences from partial information.

18. After the applicant completes Phase II, his Test Ranking Grade for the written test and his grades from Phase II are combined to give the applicant a Percentile Ranking Grade. The PRG is the applicant's total score in the Special Agent Selection System, and "is utilized to rank each applicant in the program(s) under which he/she may qualify."

67-110 MIOG¹ § 67-17.3.7.

19. Applicants are supposed to be ranked in order of objectively tested merit because “[a]ppointments are made on a competitive basis due to the limited number of vacancies occurring in this position.” 67-101 MIOG § 67-17.2.3 (emphasis added).

(5) Conditional Appointment

20. Applicants who pass Phase II and whose percentile ranks are competitive receive a Conditional Appointment as a Special Agent in the FBI. Some 2,100 applicants received the conditional appointment in FY2009. The conditional appointment is made by way of a letter from the appointing official, who is the Chief of the Human Resources Division.

21. The conditional appointment letter specifies the conditions required for further processing and for entrance on duty at the FBI Academy. For example, successful completion of the background investigation. The appointment letter also discusses the grounds under which the appointment may be rescinded. One of the specified grounds is suitability.

22. According to Supervisory Special Agent Mark A. Gant, who is Section Chief of the Initial Clearance Section, “[o]ur background investigation is bifurcated. We do a suitability portion and we also do a security portion. The suitability standards are determined by the Office of Personnel Management (OPM). The security standards are established by the Office of the Directorate [sic] of the [sic] National Intelligence. We utilize governmental standards in order to

¹ Manual of Investigative Operations and Guidelines, 1998 print edition. The cited portions appear in the Appendix.

qualify our candidates on suitability and security.”²

(6) Suitability and the Background Investigation

23. Essentially, throughout the application process and continuing into the background investigation, the applicant’s suitability for employment is continuously monitored.

24. The applicant’s suitability is continuously monitored because the Manual of Investigative Operations and Guidelines states, at 67-15, “[d]o not protract investigation when derogatory information developed obviously disqualifies applicant for Bureau employment.” 67-15 MIOG at § 67-7.7(8). There is no point in the FBI continuing to process an applicant who is not suitable for employment. Thus, section 67-7.7(8) of the FBI manual figures prominently in Complainant’s case because Complainant’s self-reported conduct was reviewed numerous times and did not rise to the level of a disqualifying suitability issue until FBI employees falsified investigative records as described herein.

25. The continuous monitoring of an applicant’s suitability begins with the online application and Phase I test, and continues with the mandated hiring forms provided to the applicant with the conditional appointment letter. One of these forms is the SF-86 Questionnaire For National Security Positions. The SF-86 Cover Sheet containing FBI-specific questions and conditions is also required to be submitted with the SF-86.

26. Once filled out, the SF-86 and Cover Sheet

² Audio interview accessible at <http://www.fbi.gov/news/podcasts/inside/background-checks-for-new-applicants/view> (accessed October 17, 2010) (emphasis added).

are transmitted to the Special Agent Clearance Unit at Headquarters. An intake analyst reviews all of the information. If the applicant reports disqualifying information in the SF-86 or Cover Sheet, the applicant is promptly adjudicated not suitable and receives a rejection letter.

27. If the applicant is still suitable after submitting the SF-86 and Cover Sheet, the applicant is given a Personnel Security Interview. The PSI form is filled out by the interviewing agent, and records more information about the applicant—both suitability (e.g., drug and alcohol use) and security (e.g., foreign contacts). The PSI instruction form provided to the interviewer advises the interviewer to immediately report negative information developed during the interview. The applicant is also fingerprinted after the PSI. If the applicant reports disqualifying information in the PSI or if indices checks are unfavorable, the applicant is adjudicated not suitable and receives a rejection letter.

28. If the applicant is still suitable after completing the PSI and the applicant passes criminal records and fingerprinting checks, the applicant is moved forward and receives a polygraph examination.

29. The polygraph examination asks at least two series of questions: Suitability Series I or others, and Security Series II or others. According to a Human Resources Division officer interviewed on television in 2008 (Complainant is unable to locate the video), some thirty percent of applicants do not pass the polygraph examination. This leaves approximately

1,400 applicants per year for some 800-900 Special Agent slots at the Academy. At some point or another, about 500-600 of these applicants will be removed from the process or otherwise deferred.

30. After the polygraph, the Special Agent Applicant Unit (SAAU) reviews the polygraph report to determine whether the applicant's drug use and other conduct disclosed at the polygraph are within acceptable parameters. SAAU is a component of the Initial Clearance Section, whose Section Chief is SSA Mark A. Gant.

31. If the applicant is still suitable after the polygraph, SAAU approves the applicant and the applicant's completed file is submitted to the Special Agent Clearance Unit (SACU) with a directive to initiate the substantive portion of the applicant background investigation. This includes interviews with references and former employers, for example.

32. Although the term "background investigation" is used in memoranda transmitting the applicant file, SACU has already received and reviewed substantially all of the information through other channels, and the investigation technically starts with the submission of the SF-86 and other materials.

33. The stated function of SACU, which is also a component of the Initial Clearance Section, is to conduct investigations on applicants and approve them for security clearances, or else make suitability determinations or security denials on the applicants. In other words, SACU is stated to conduct the suitability and security phases of the background investigation. If the applicant's background investigation

is not completed favorably, the applicant is adjudicated unsuitable or is denied a clearance, and the applicant receives a rejection letter.

34. If the applicant's background investigation is completed favorably, SACU transmits the file to the Human Resources Division, which makes final selections for the FBI Academy. Applicants who receive "The Call" to report to the Academy are those who actually enter on duty as trainees.

35. One of the components of the background investigation is adjudication. In adjudication, the analyst creates "leads" for SACU Special Agents to re-interview the applicant in areas covered in the background investigation. The applicant "may be reinterviewed for the purpose of procuring additional information not previously furnished by him/her or to clarify information received during investigation." 67-25 MIOG at § 67-7.8(16)(a).

36. A "lead" is an assignment to a Special Agent, Field Office, or other component of the FBI to conduct a mini-investigation as part of a larger investigation. The analyst sends questions, talking points, or other matter to the Special Agent who is to communicate with the applicant. The analyst does not communicate directly with the applicant, although the analyst's actions affect the applicant directly.

37. The Special Agent "covers" the lead and reports the results of his or her investigation to the analyst in a FD-302³ or other standard forms, and the analyst makes a decision with the information.

³ A FD-302 is a standard form used to report interviews with witnesses, applicants, and other sources of information.

38. SACU is a component of the FBI in the Security Division, completely separate and apart from the Human Resources Division.

39. SACU is not authorized to make its own determinations about an applicant's competitiveness.

40. SACU is also not authorized to decide which applicants to investigate and which applicants not to investigate.

41. SACU is also not authorized to discriminate between applicants on any basis except what is authorized by law, namely criminal convictions and conduct that rises to the level of OPM suitability.

42. SACU is expressly not authorized to determine that some applicants need to be disqualified while others do not. In other words, a "reject pile" is prohibited.

43. SACU is also not authorized to decide on its own to pursue particular applicants for disqualifying information, as opposed to other applicants who are not so pursued.

44. SACU is, most importantly, not authorized to "select" or "non-select" applicants. Those decisions are supposed to be made by the Human Resources Division on a merit basis, not by SACU on a judgmental basis. As demonstrated in Complainant's case, SACU is overstepping its bounds.

B. Complainant's Application

45. Complainant filed the online application on December 2, 2008 and passed.

46. Complainant was invited to and passed the Phase I test conducted on January 8, 2009.

47. Complainant was invited to and passed the Phase II interview and written test conducted on May 1, 2009.

48. Complainant was conditionally appointed on May 6, 2009 and accepted the conditional appointment.

49. Complainant completed the SF-86 and Cover Sheet, which were transmitted to SACU on May 22, 2009.

50. Complainant's SF-86, Cover Sheet, and all attachments were reviewed by intake analyst Kimberly Ann Maggi. Complainant was not unsuitable and was approved to move forward in the investigation.

51. Complainant completed the Personnel Security Interview on May 28, 2009 and was not unsuitable. Complainant was fingerprinted and passed standard indices checks.

52. As shown in the applicant file, the completed PSI form and completed SF-86 were transmitted to SACU between May 28, 2009 and June 8, 2009, then again on June 15, 2009 after the polygraph. All conduct reported by Complainant in the PSI, SF-86, and Cover Sheet was preliminarily adjudicated in Complainant's favor by intake analyst Kimberly Ann Maggi.

53. Complainant was given a polygraph examination on June 9, 2009. Complainant passed the polygraph examination and was not unsuitable. The Special Agent Applicant Unit decided to "CONTINUE" Complainant's processing. All conduct reported by Complainant in the polygraph had already been reported in his written application and was preliminarily adjudicated in Complainant's favor.

54. Complainant's file was transmitted to SACU on June 15, 2009 with a directive to initiate the substantive

background investigation, and Complainant was not unsuitable.

C. The Special Agent Clearance Unit

55. Unknown personnel improperly and illegally decided to disqualify Complainant from employment prior to Complainant receiving a full background investigation. They placed Complainant in a "reject pile" for the purpose of developing disqualifying information that would sustain a negative suitability determination if appealed through the FBI's internal appeals process.⁴

56. The decision to reject Complainant before the background investigation was based on Complainant's perceived moral character being compared with other applicants' perceived moral character, which is a prohibited personnel practice under 5 U.S.C. § 2301 and § 2302. This is because the Special Agent Clearance Unit is not allowed to judge applicants' character based on how they appear on paper, prior to an investigation being conducted. Otherwise, applicants would be competing with each other in a dimension of moral character, which is not objectively testable. Sadly, this is precisely what is occurring at SACU, as demonstrated by Complainant's case.

57. The Department of Justice has directed all of its components to follow the Merit System Principles and not engage in Prohibited Personnel Practices.

58. The illegal decision to place Complainant in a "reject pile" at SACU and intentionally develop disqualifying information was made some time during the 20 day period

⁴ The FBI has an adjudication review board, but the board did not hear Complainant's Applicant Appeal of February 7, 2010.

following Complainant's file being transmitted to SACU. Had this unlawful discrimination not occurred, Complainant would have been asked to enter his SF-86 into the Office of Personnel Management E-QIP system for further processing, like any other applicant. Instead, Complainant was diverted by an artifice to final adjudication after additional negative information was purportedly developed.

59. Between June 25, 2009 and June 30, 2009, Special Agent GRAHM L. CODER communicated with Complainant numerous times.

60. The purpose of Special Agent Coder's communications with Complainant was to develop disqualifying information that went above and beyond Complainant's SF-86 and polygraph report, because the conduct previously reported to and approved by SACU was insufficiently negative to sustain a suitability determination if appealed in the FBI's internal appeal process.

(1) The 6/25/2009 Phone Conversation with Special Agent Coder

61. Complainant was contacted by phone on 6/25/09 by Special Agent Grahm Coder.

62. SA Coder read aloud an attachment to Complainants' SF-86 describing an incident in which Complainant was present when a friend purchased less than \$100 of marijuana. SA Coder asked whether the SF-86 attachment was true. Complainant stated it was true. This incident had already been approved by the Special Agent Applicant Unit when it reviewed Complainant's polygraph report, and was approved by SACU when intake analyst Kimberly Ann Maggi reviewed Complainant's SF-86 and Personnel Security Interview forms.

63. Complainant's Applicant Appeal, which is Exhibit A attached hereto, explains the 6/25/2009 conversation and issues in sufficient detail that it is incorporated by reference and need not be repeated here.

64. The author of the Declaration in Support of Applicant Appeal⁵ is [REDACTED], who is the Complainant's best friend from college. The other party involved in the transaction is [REDACTED], another of the Complainant's friends from college. Mr. [REDACTED] and Mr. [REDACTED] have offered to speak with investigators about this incident, and their contact information is contained in Exhibit A. The FBI already has had the appeal since February 2010, when Complainant sent it to Acting Unit Chief MONTCHELL BRICE of SACU for the purpose of being heard by the review board.

65. To summarize the appeal, a FD-302 prepared by Special Agent Grahm Coder falsely states that Complainant, acting as an attorney, negotiated an illegal drug buy. This is all false. Negotiating an illegal drug buy is a crime, and doing so as an attorney is an ethical violation.

(2) The 6/30/2009 Phone Conversation with Special Agent Coder

66. Complainant had a final telephone conversation with Special Agent Coder on June 30, 2009. This conversation is not disclosed in Special Agent Coder's FD-302, although factual information from the conversation appears in the backdated FD-302. The backdated FD-302 is a false writing because, among other reasons, it was made on June 30, 2009 but states that it was made on June 25, 2009. Complainant's emails attached to

5 The Declaration commences at page 17 of the Appeal.

Exhibit A and telephone records provided as Exhibit C prove the FD-302 is a false writing on this basis.

**(3) Special Agent Coder's Communications with the
Analyst and Edward M. Broussard**

67. When communicating with an analyst or any other personnel in an applicant investigation, a Special Agent in the FBI is always required to state the truth, and is always required to make any statements necessary to make the statements made not misleading. Special Agent Coder violated these rules in communicating with Personnel Security Specialist ABBY M. HALLE and attorney EDWARD M. BROUSSARD by making and using a false writing as described below.

(4) Outcome of Falsification of Records

68. Complainant was adjudicated not suitable for "drug use" and "criminal conduct," and Complainant received a rejection letter from SACU dated 7/1/09.

69. The Special Agent Selection System is designed to predict an applicant's ability to serve as well as his or her success in the FBI. MIOG at § 67-17.2.4. The Human Resources Division made its initial determinations in these areas in Complainant's case, selected Complainant, and made the conditional appointment of Complainant.

70. Had the Defendants not falsified investigative records, and had Complainant passed the background investigation, Complainant would have had the opportunity to compete with other cleared applicants based on merit, as well as the specialized needs of the FBI, for a slot at the FBI Academy.

D. Damages

71. In addition to causing Complainant's disqualification from the FBI, the false matter or a summary thereof was provided to the CIA upon request. This explains Complainant's rejection from the CIA shortly after Complainant had a lengthy interview with the CIA, in which the end of Complainant's FBI application was discussed.⁶ At this point, it would be futile for Complainant to apply for any other government position requiring a background investigation, because the FBI has officially determined Complainant to be a criminal and unethical attorney. This is a stark contrast to the real Complainant who, in addition to having integrity, possesses a trait that is especially rare among attorneys: candid honesty. Complainant has also never been charged, convicted, or arrested for any crime, and has never been disciplined or investigated by the State Bar of California. Why should such a person be prohibited from serving his country?

72. The false matter in this case was re-published within the FBI. Complainant's reputation within the FBI was ruined such that no further correspondence from Complainant was taken seriously.

73. The false matter in this case has damaged the credibility of Special Agent Grahm L. Coder and the FBI, and has brought disrepute upon the Department of Justice. The conduct that occurred was wrong, and is wrong.

⁶ The interviewer advised that a decision from the selection board would be made in approximately eight weeks. Instead of eight weeks, Complainant was rejected after two weeks. The most reasonable inference is that the FBI suitability determination was provided to the CIA upon request.

COUNT ONE: FALSE STATEMENTS TO THE UNITED STATES OF AMERICA

74. The rule is that no person shall make a false statement of material fact to the United States of America. 18 U.S.C. § 1001(a)(2).

75. As more particularly discussed in Exhibit A, which is Complainant's Applicant Appeal, the FD-302 prepared by Special Agent Grahm Coder contains false statements of material fact. The statements are false because (1) Complainant did not make the statements attributed to him, and (2) Complainant did not engage in the conduct attributed to him. SA Coder's FD-302 is attached as Exhibit B. The issue of its falsity is conclusively settled in the Applicant Appeal by the polygraph report, Declaration of [REDACTED], and Declaration of [REDACTED]. The declaration of [REDACTED], who is the person most qualified to judge Complainant's "involvement" in the subject transaction, is contrasted with SA Coder's FD-302 as follows:

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

76. The polygraph report itself contradicts SA Coder's FD-302, stating "Applicant was present in 2008 when a friend purchased less than \$100 of marijuana" (emphasis added). It

was conclusively determined at the polygraph that Complainant was telling the truth. Therefore, SA Coder's FD-302 is false.

77. In a case under 18 U.S.C. § 1001, the standard for materiality is whether the false statement has a "natural tendency to influence or [is] capable of influencing, the decision of the decisionmaking body to which it is addressed." United States v. Gaudin 515 U.S. 506, 510 (1995).

78. A statement that an attorney applicant intentionally and actively negotiated an illegal drug buy of unspecified size less than a year before he applied to the FBI is certainly "capable of influencing" the FBI's decision whether to continue to process the applicant. That is an understatement. The false statements in SA Coder's FD-302 were material to the FBI's decision to accept or reject Complainant.

79. The false statements of material fact were made to the United States of America when SA Coder filed his FD-302 in the file, thereby completing the offense.

COUNT TWO: FALSIFICATION OR CONCEALMENT OF MATERIAL FACTS

80. The rule is that no person shall falsify, conceal, or cover up a material fact from the United States of America. 18 U.S.C. § 1001(a)(1).

81. As more particularly discussed in Exhibit A, Special Agent Coder concealed the identities of two witnesses whose information was material to the decision to reject Complainant. SA Coder omitted the witnesses from his FD-302 so that no one else (including the review board) would know that SA Coder specifically asked for and was provided with the witnesses' information for the purposes of verification.

82. The information was material because the witnesses were the buyer and seller in a drug transaction and were in the best position to judge and comment on Complainant's "involvement."

COUNT THREE: MAKING OF A FALSE WRITING

83. The rule is that no person shall make a false writing or entry in any system of records in the jurisdiction of the United States of America. 18 U.S.C. § 1001(a)(3).

84. Here, Special Agent Coder illegally backdated his FD-302 from June 30, 2009 to June 25, 2009. The backdating makes it appear that multiple separate and independent communications with Complainant all occurred during a single telephone conversation on June 25, 2009. This is false, as more particularly described in Exhibit A and as proved by Complainant's telephone records that are attached as Exhibit C.

COUNT FOUR: USE OF A FALSE WRITING

85. The rule is that no person shall use a false writing in any matter within the jurisdiction of the United States of America. 18 U.S.C. sec. 1001(a)(3).

86. Here, Special Agent Coder used the false FD-302 that he created by providing it to Personnel Security Specialist Abby M. Halle, knowing that PSS Halle and others would rely on the accuracy of the facts contained in the FD-302. This is more particularly discussed in Exhibit A. PSS Halle relied on the FD-302 when preparing her Adjudicative Recommendation, which is attached as Exhibit D. The Adjudicative Recommendation quotes the FD-302 in support of the primary basis for Complainant's rejection: "drug use" and "criminal conduct."

**COUNT FIVE: MANIPULATION OF THE OFFICE OF
GENERAL COUNSEL OF THE FBI**

87. Personnel Security Specialist Abby M. Halle contacted attorney Edward M. Broussard of the Office of General Counsel in an undated email message that is included in Exhibit E.

88. The redacted section of the Adjudicative Recommendation refers to PSS Halle's communications with the Office of General Counsel. This is shown by references to OGC in a draft presentation by PSS Halle to the review board, which draft was prepared in October 2009.⁷

89. OGC was manipulated by the provision of partial information. PSS Halle had access to the entire application of Complainant, including the Personnel Security Interview and polygraph report, yet she only sent OGC an excerpt from Complainant's SF-86. Further, OGC was not advised that there were witnesses who could have been contacted. OGC was further not advised that the FD-302 prepared by Special Agent Coder contained false statements. OGC was further not advised of other ethical dilemmas and Complainant's appropriate choices, which were disclosed elsewhere in Complainant's application. For example, OGC was not advised that Complainant had, a year more recently than the May 2008 drug incident, lost his job due to compliance with an ethical duty to protect clients. This particular choice was also disclosed in Complainant's SF-86.

90. By providing OGC false information and omitting

⁷ There is no indication of any kind that the review board actually heard and determined Complainant's appeal. There is no indication of any kind that the review board ever considered Complainant's case. Rather, Supervisory Special Agent Mark A. Gant wrote on two occasions that Complainant had exhausted his administrative remedies.

statements necessary to make the statements made not misleading, Special Agent Coder and PSS Halle manipulated OGC into "recommending" Complainant's disqualification.

COUNT SIX: SUPPRESSING EVIDENCE OF SERIOUS MISCONDUCT

91. The FBI's Manual of Administrative Operations and Procedures states:

"Each employee has the responsibility to report promptly, any indication of possible exploitation or misuse of Bureau resources; information as to violations of law, rules or regulations; personal misconduct; or improper performance of duty Reporting may be to supervisors, the Director, the Office of Professional Responsibility, Inspection Division, FBI [headquarters], or directly to the Department of Justice Office of Professional Responsibility."⁸

92. Assistant Director Candice M. Will is responsible for disciplining FBI employees for misconduct. AD Will is also responsible for upholding the FBI's "core values"⁹ of "Uncompromising personal integrity and institutional integrity" and "Accountability by accepting responsibility for our actions and decisions and the consequences of our actions and decisions."

93. Like all other FBI personnel, AD Will has an obligation to uphold these core values and an obligation to report allegations of misconduct, regardless of how they come to her attention. AD Will, however, is unique because she is an FBI executive who has the power to discipline almost anyone

⁸ FBI's Manual of Administrative Operations and Procedures, Part I, Section 1-23.

⁹ <http://www.fbi.gov/about-us/quick-facts>

in the FBI. Her leadership role makes her conduct in this case particularly distressing.

94. In December 2009, Complainant wrote to AD Will inquiring how to file a complaint with the Office of Professional Responsibility. There was no response.

95. From December 2009 to January 2010, Complainant read the portion of the MIOG that describes the Office of Professional Responsibility. Complainant also read the famous "Bell Report" about OPR. Relying on the MIOG as current, in January 2010 Complainant sent a thirty page complaint directly to AD Will, supported by Complainant's own declaration under penalty of perjury. Complainant followed up the OPR complaint with a declaration from witness [REDACTED] supporting Complainant. The OPR complaint and supporting declaration of Complainant are attached as Exhibit F. The declaration of [REDACTED] appears at page 17 of Exhibit A.¹⁰

96. AD Will failed to acknowledge receipt of the complaint or supplemental declaration, and failed to forward any of the materials to the Inspection Division for investigation.

97. Rather, AD Will did nothing with the complaint and apparently placed it in OPR's "zero file." This practice is expressly condemned in the Bell Report, which concluded that the "zero file" at OPR could conceivably be used as a "dumping ground" for complaints that otherwise had merit. This is precisely what happened in this case, as is shown in the emails attached as Exhibit G between Complainant and AD Will as well

¹⁰ The declaration supported both the OPR complaint and Complainant's Applicant Appeal.

as Assistant Director Amy Jo Lyons.¹¹ The emails show that the Inspection Division was completely unaware of Complainant's January 2010 complaint to AD Will, despite that AD Will or her subordinates could easily have forwarded the complaint and supporting evidence to the Inspection Division at any time.

98. In addition to failing to forward the allegations and evidence to the Inspection Division, AD Will failed to forward the complaint and supporting evidence to the Office of the Inspector General as required by law. This shows that Assistant Director Will suppressed evidence of serious misconduct.

99. In the alternative, this shows a failure by AD Will to supervise her subordinates in the handling of evidence of misconduct. Either way, what happened is wrong.

100. AD Will's defense, as stated in emails to Complainant, is that she does not have "jurisdiction" over "complaint intake." This is no defense, because everyone in the FBI is required to report allegations of misconduct to the Inspection Division for investigation.

101. Because of the high rank of AD Will, her duties involving the discipline of FBI employees, and her utter disregard of Complainant's OPR complaint, the core values of the FBI, and her duty to forward the information to the Inspection Division and Inspector General, Complainant contends that Assistant Director Will herself engaged in serious misconduct by suppressing evidence of misconduct that was expressly brought to her attention.

¹¹ AD Lyons is in charge of the Inspection Division.

**COUNT SEVEN: FAILURE TO PRESENT APPLICANT APPEAL
TO ADJUDICATION REVIEW BOARD**

102. The FBI maintains an adjudication review board to consider appeals from applicants of their negative suitability determinations.

103. Supervisory Special Agent Mark A. Gant is the Section Chief of the Initial Clearance Section, which contains the Special Agent Applicant Unit and Special Agent Clearance Unit.

104. In December 2009, SSA Gant responded to a letter from Complainant addressed to the Division Chief of the Security Division, a vacant position. Prior to Complainant actually appealing the suitability determination, SSA Gant advised Complainant that Complainant had "exhausted" his "administrative options" "regarding" the appeal of Complainant's "non-selection."

105. After Complainant did appeal the suitability determination in February 2010, SSA Gant wrote substantially the same letter and purported to speak on behalf of the entire FBI in considering "this matter" closed. In sum, SSA Gant failed to present Complainant's Applicant Appeal to the review board responsible for deciding applicant appeals. SSA Gant also failed to forward the appeal to the Inspection Division for investigation of the misconduct alleged and proved therein.

106. SSA Gant's mishandling of Complainant's appeal appears to invite an action for administrative mandamus to compel SSA Gant to do his duty as an officer of the United States and refer the matter to the adjudication review board pursuant to FBI policy.

**COUNT EIGHT: FAILURE TO REPORT ALLEGATIONS OF
SERIOUS MISCONDUCT BY A SUBORDINATE**

107. From September 2009 to December 2009, Complainant wrote eight separate letters to Acting Unit Chief Montchell C. Brice initially requesting information on how to appeal, and later alleging serious misconduct by Special Agent Coder, who was a subordinate of AUC Brice in June 2009.¹²

108. AUC Brice failed to forward any of these letters to the Inspection Division as required by internal FBI policy on reporting allegations of misconduct.

COUNT NINE: VIOLATION OF THE MERIT SYSTEM

109. In official memoranda, the Department of Justice has directed all of its hiring components to follow the Merit System. This is true despite the fact that some of its components are in the Excepted Service. The FBI manual applies the merit system to applicant selection.

110. There is no doubt that the Human Resources Division of the FBI follows the Merit System; HRD painstakingly reviews the qualifications of thousands of applicants in order to select those deemed "most competitive" for testing, interviews, and conditional appointments. The problem lies in the Special Agent Clearance Unit, which is supposed to be exacting, fair, and unbiased, but which actually makes inexact, unfair, and biased decisions.

111. In this case, an unknown employee or employees decided after reviewing Complainant's completed application

¹² Special Agent Coder graduated the Academy in approximately April 2009 and had been a Special Agent for all of two months at the time he disqualified Complainant.

that Complainant was unworthy of serving in the FBI. The employee or employees then decided to develop disqualifying information. The only reason this artifice worked is that Special Agent Coder falsified information and Supervisory Special Agent Mark A. Gant failed to present Complainant's applicant appeal to the review board. Had Special Agent Coder simply told the truth, Complainant would either have received a full background investigation and would be a Special Agent in the FBI, or Complainant would be an intelligence officer in the CIA. Either result would have been acceptable to Complainant.

112. Disqualifying someone from ever working for the United States of America is inconsistent with the Merit System and applicable law.

CONCLUSION

113. According to the FBI's own manual, properly conducted applicant selection is the most important work of the FBI.

114. The Special Agent Clearance Unit of the FBI appears to be engaged in systemic misconduct in applicant selection, which is the most important work of the FBI. These abuses of power are then covered up by SACU's failure and/or the ICS Section Chief's failure to present properly formatted, well-supported applicant appeals to the adjudication review board.

115. The misconduct by personnel in the Special Agent Clearance Unit focuses on falsifying information in applicant investigations, shading facts in the most negative possible light, and otherwise being unfair to applicants. In this way, the FBI avoids applying the Merit System at the background investigation stage of applicant selection, defeating the

purposes of the Merit System as well as the FBI's own manual.

116. The abuses of power shown in this Verified Complaint are not unique to this case. Information is available upon request from at least one other applicant who was disqualified at the same time as Complainant by another Special Agent, Christopher Penn, using the same dishonest methods.

117. Ability to serve the American people does not correlate with appearance on paper. Rather, ability to serve is objectively tested in the Special Agent Selection System and should be the basis upon which applicants are selected, just as the FBI manual provides for.

118. In this case, a number of personnel contributed to the improper disqualification of Complainant and the cover-up of the misconduct that occurred. Complainant contends those most responsible are Special Agent Grahm L. Coder for falsifying information, Supervisory Special Agent Mark A. Gant for suppressing Complainant's applicant appeal, and Assistant Director Candice M. Will for suppressing evidence of Special Agent Coder's misconduct.

119. Complainant respectfully requests that the Inspector General investigate this matter, because Assistant Director Will cannot investigate or discipline herself.

VERIFICATION

As to paragraphs 1-3, 5-8, 10, 14, 17-19, 21-22, 45-54, 59, 61-66, 68, 75-77, 81-82, 94-95, 104-105, 107, 113, and 116:

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on 12/12/2010

[Redacted Signature]
[Redacted Title]

As to the remaining paragraphs:

On information and belief, I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 12/12/2010

[Redacted Signature]
[Redacted Title]

Respectfully Submitted By:

Date: 12/12/2010

[Redacted Signature]
[Redacted Title]

Complainant

EXHIBIT A

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United States of America
Department of Justice
Federal Bureau of Investigation

[Redacted],

Applicant,

v.

United States Department of Justice,
Agency.

) Case No. 67B-HQ-[Redacted]
)
) **APPLICANT APPEAL OF**
) [Redacted]
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) Filed: 2/7/2010
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EXHIBITS

1 **INTRODUCTION**

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

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

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

10 **CHRONOLOGY**

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

23 **PROBLEM**

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

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

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

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

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

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

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

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

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

8 Being present in the same house but not involved when two friends exchange less than
9 \$100 of marijuana is not a violation of the FBI drug policy stated in the manual, OPM suitability
10 guidelines, California or Federal law, or ethical rules controlling attorneys licensed in my State.
11 OGC’s legal opinion was given by an attorney who is not licensed to practice law in California
12 and who is therefore unqualified to judge me under the standards of professional conduct of my
13 State.

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

17 **FACTS**

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

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

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

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

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

14 **The SF-86**

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

20 **Personnel Security Interview**

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

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

1 **Polygraph Examination**

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

11 **Special Agent Coder**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 on 6/25/2009 like it claims to be. This is significant because it appears SA Coder wrote his FD-
2 302 after OGC gave its legal opinion about the drug transaction.

3 36. "He stated that there are no pending issues related to the [REDACTED]
4 [REDACTED], and the improper reimbursement procedures." This
5 issue was not mentioned at all during either phone conversation. SA Coder sent me questions on
6 this issue by email after our 6/25/2009 phone conversation, and I answered them by email. The
7 subject did not come up again.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 by a statutory maximum \$100 fine, mandatory diversion, and no jail time or even “booking.”
2 Health and Safety Code sec. 11357(b). In other words, it is punished less severely than a
3 speeding ticket. The State statute of limitations on any crime committed by [REDACTED] in the May
4 2008 incident ran in May 2009 at the latest. No one was charged, investigated, or otherwise.

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

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

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

13 Other Ethical Choices

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

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

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

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

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

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

CIA

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

Alcohol Use

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

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

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

1 could also work from home as we saw fit.

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

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

13 **Life Coach**

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

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

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

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

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

26 Date: 2/7/2010 [REDACTED]

Witness

United States of America
Department of Justice
Federal Bureau of Investigation

Applicant,

V.

United States Department of Justice,
Agency.

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

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 are [REDACTED] We had the same [REDACTED]
9 [REDACTED] and [REDACTED] We were [REDACTED] 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 [REDACTED], CA.

13 4. In the evening of May 2, 2008, Mr. [REDACTED] accompanied me to our mutual friend
14 [REDACTED] 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] house, Mr. [REDACTED] initially made a few comments about
24 [REDACTED] 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 [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: 1/20/10

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File #67B-HQ-[REDACTED]

Declaration of [REDACTED]

1 **KEY LAW**

2 **A. Required Scope of Investigation**

3 “No work is more important than properly interviewing, evaluating and investigating
4 applicants for the Special Agent (SA) position with the FBI.” Manual of Investigative
5 Operations and Guidelines (“MIOG”) at § 67-17.1 (emphasis added).

6 “Interviews and investigations must be exhaustive and designed to determine applicant’s
7 suitability for the position of Special Agent and develop any information bearing on his/her
8 suitability for FBI employment.” *Id.* (emphasis added).

9 “Investigation must be painstakingly exact, fair, unbiased.” MIOG at § 67-7.7(4).

10 A Special Agent conducting an applicant investigation “should be persistent in his/her
11 effort to pursue every lead to its logical conclusion.” MIOG at § 67-7.7(7) (emphasis added).

12 “Derogatory information should be fully developed and reported in detail. Ascertain facts
13 on which derogatory conclusions [sic] predicated and follow through in questioning to obtain
14 such facts.” MIOG at § 67-7.7(8) (emphasis added).

15 “Reports should show unbiased and complete inquiry. If some question exists regarding
16 accuracy of derogatory information, identify original sources.” *Id.* (emphasis added).

17 **B. Drug Policy**

18 The FBI drug policy is stated at section 67-3.2.3(5) and 67-16.2.2 of the manual. An
19 applicant will be disqualified if he or she has used marijuana in the past three years or more than
20 15 times in his or her life.

21 Of note, the manual states that the Special Agent Applicant Unit is to be consulted in
22 cases in which there is reported involvement in a drug purchase: “Determination concerning
23 any other drug-related situations/usage (which would include the purchase/selling of any illegal
24 drug, illegal use of any drug while employed in any law enforcement or prosecutorial position, or
25 while employed in a position which carries with it a high level of responsibility or public trust)
26 or unusual circumstances are to be referred to SAAU for decision and notification.” MIOG §
27 67-3.2.3(5)(d).

1 **ARGUMENT**

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

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

9 On the actual test, SA [REDACTED] asked me the [REDACTED] polygraph question, which was
10 substantially "[REDACTED]
11 [REDACTED]" I answered [REDACTED] and when I passed the exam it was officially determined that I was
12 telling the truth. The true facts are that I was "present in 2008 when a friend purchased less than
13 \$100 of marijuana," and that I had no other involvement.

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

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

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

27 ¹ Offer made in Office of Professional Responsibility complaint, filed 1/3/2010.

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

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

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

SA Coder’s FD-302	Declaration of [REDACTED]
13 “He said that he was involved in the decision 14 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”
15 “He stated that he assisted in negotiating the 16 price of the marijuana purchase between the friends.”	“Mr. [REDACTED] was not involved and did not assist in the ‘negotiation’ of the purchase price between me and [REDACTED]”
17 “He stated that he acted as a ‘representative’ 18 of the buyer of the marijuana to the seller.”	“Mr. [REDACTED] did not act as my representative or attorney.”

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

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

26 //
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1 **C. SAAU Approved the True Facts.**

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

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

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

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

14 The rule is that possession of marijuana is unlawful.

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

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

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

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

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

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

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

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

8 Here, I advised [REDACTED] that I could not act as his attorney in this transaction. As [REDACTED]
9 states, I did not act as his attorney or representative, and I was not involved and did not assist in
10 any aspect of the transaction. I complied with Rule 3-210.

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

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

16 [REDACTED]

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

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

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

27 //

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

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

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

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

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

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

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

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

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

9 **G. Supplemental Declaration**

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

12 I, [REDACTED] declare:

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

14 A. No.

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

16 A. No.

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

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

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

20 A. No.

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

22 A. No.

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

25 Date: 2/7/2010 [REDACTED]

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28 File #67B-HQ-[REDACTED]

Applicant Appeal of [REDACTED]

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REQUESTED RELIEF

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

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

Respectfully submitted by: [redacted]

2/7/2010

Date [redacted]
Applicant

Attachment 23. to SF-86: Illegal drugs

[REDACTED] [REDACTED]

#1 In May 2008, while visiting [REDACTED] 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 [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 [REDACTED] 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] eccentric behavior concerning prices, and the drama that goes with it. So when (P-1) [REDACTED] and I arrived at [REDACTED] 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. (P-1) [REDACTED] ultimately purchased the marijuana and I believe he and [REDACTED] directly agreed on the terms.

[REDACTED]

(86 Review) 5/18/2009.

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

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

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

PAGE 4 ITEM 23 ILLEGAL Drug Activity: in May 2008 applicant ~~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 Flow. At the end of statement applicant refers to an incident disclosed during YH II interview.

M. Alcohol/Drugs

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

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

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

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

4. Have you ever abused any over the counter products, sniffed gasoline, huffed aerosol products, abused nitrous oxide gas or helium, chewed khat (stimulant leaf) or sniffed paint/glue?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If so, explain.
---	---

5. Have you ever been involved in the purchase, manufacture, trafficking, production, transfer, shipping, distribution, receiving or sale of illegal drugs?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If so, provide details below as to what type, when, amount, where – public or private, how did you obtain the drugs, who else knows of the drug use, purchase, manufacture, trafficking, transfer, shipping, distribution, receiving or sale of illegal drugs?
---	--

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

(If necessary, provide attachment of additional information)

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

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

Applicants MUST provide drug usage information covering their entire life.

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

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

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

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

Type	Number of Uses	Month / Year First Used	Month / Year Last Used	Did You Ever Buy?	
Marijuana (pot, cannabis)	7-10	est. 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:

plea see SF-86 Attachment 1.

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

Details:

Applicant Initials

FEDERAL BUREAU OF INVESTIGATION
POLYGRAPH REPORT

Benson

REVIEWED BY: SSA Ray Lauer <i>RGL</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- [redacted] - 5
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Field Office/Agency Requesting Examination

FBIHQ

Authorizing Official

Director, FBI

Date Authorized

03/01/1994

Examinee's Name (Last, First, Middle)

Date of Birth (mm/dd/yyyy)

SSN (xxx-xx-xxxx)

Case Title:

BUAP-SUPPORT

PRE-EMPLOYMENT POLYGRAPH EXAMINATION

Case Synopsis/Examiner's Conclusion:

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

(H) [redacted]

On June 9, 2009, the applicant, [redacted] came to the 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) [redacted]

Examiner's Name SA [redacted]

RGL

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

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/25/2009

On June 25, 2009, [REDACTED] (applicant), telephone number [REDACTED], was interviewed telephonically by SA 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 **SAMPLE**

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Exhibit 6

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.



[Redacted text block containing multiple paragraphs of obscured content]

[REDACTED]

[REDACTED]

4. Copy of my license to practice law in California.

I will pr [REDACTED] copy of [REDACTED] se 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 94105-1639 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]

Subject: Follow up items for FBI app.

From: "Coder, Graham L." <Graham.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. Did [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 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 taken against you? Was there any allegations against you? Does [REDACTED] know about the improper reimbursements? Please be very detailed in your description. Please include dates, times, 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,

Coder, Graham L. wrote:

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

1. for your tax due to 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 procedures that you performed while acting as [REDACTED]. You then mentioned that you made a donation back to the organization. How much did you donate? Please provide the name of the foundation that we might confirm the donation. Please also provide the details regarding the mitigation that you made reference to. Was there an official act [REDACTED] st you? Was there any allegations against you? Does [REDACTED] know about the improper reimbursements? Please be very detailed in your description. Please include dates, times, names, and circumstances in your explanations along with any other pertinent details.

ion is the [REDACTED]
[REDACTED]. The contact who can confirm my donation is [REDACTED]
[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 bits and pieces although they also don't know about my reimbursing myself with cash from the event. The fir [REDACTED]
His contact info [REDACTED]
[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 [REDACTED]. We had a new [REDACTED], who authorized this and who may remember. His contact information is: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

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: [REDACTED]

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

To: grahm.coder@ic fbi.gov

Hi Grahm,

[REDACTED]'s contact information is:

Thanks,

[REDACTED]

EXHIBIT B

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/25/2009

On June 25, 2009, [REDACTED], telephone number [REDACTED], was interviewed telephonically by SA Graham 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], 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 Graham L. Coder:glc *glc*

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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 [REDACTED], 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 C


[Print](#)
[Close](#)


Call Detail

User Name :

Rate Code: MME0=Unlimited Expd M2M, RM45=Rollover FM 450, 5KNW=5000 N&W

Rate Period (PD): DT=Daytime, NW=Nwknd

Feature: M2MC=EXPANDED M2M, CONF=THREE-WAY CALLING, CW=Call Waiting

Item	Day	Date	Time	Number Called	Call To	Min	Rate Code	Rate Pd	Feature	Airtime Charge	LD/Add'l Charge	Total Charge
						3	MME0	DT	M2MC	0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	5KNW	NW		0.00	0.00	0.00
						3	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						2	MME0	DT	M2MC	0.00	0.00	0.00
						2	MME0	DT	M2MC	0.00	0.00	0.00
						1	MME0	DT	M2MC	0.00	0.00	0.00
						2	MME0	DT	M2MC	0.00	0.00	0.00
						6	RM45	DT		0.00	0.00	0.00
						3	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						5	RM45	DT		0.00	0.00	0.00
						5	5KNW	NW		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						3	5KNW	NW		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						6	5KNW	NW		0.00	0.00	0.00
						2	5KNW	NW		0.00	0.00	0.00
						17	5KNW	NW		0.00	0.00	0.00
						2	5KNW	NW		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						3	5KNW	NW		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						92	5KNW	NW	CONF	0.00	0.00	0.00
						75	5KNW	NW	CW	0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						4	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						2	MME0	DT	M2MC	0.00	0.00	0.00
						4	MME0	DT	M2MC	0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						1	5KNW	NW		0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00
						1	RM45	DT		0.00	0.00	0.00
						7	RM45	DT		0.00	0.00	0.00
						1	MME0	DT	M2MC	0.00	0.00	0.00
						1	MME0	DT	M2MC	0.00	0.00	0.00
						2	RM45	DT		0.00	0.00	0.00

				3 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				8 RM45	DT	0.00	0.00	0.00
				2 MME0	DT M2MC	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
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				1 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				3 5KNW	NW	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				3 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
146 WED 06/24/2009	3:44PM	202-324-0878	WASHINGTON DC	1 RM45	DT	0.00	0.00	0.00
147 THU 06/25/2009	7:07AM	202-324-0878	WASHINGTON DC	1 RM45	DT	0.00	0.00	0.00
148 THU 06/25/2009	7:21AM	202-324-0878	INCOMING CL	8 RM45	DT	0.00	0.00	0.00
149 THU 06/25/2009	7:29AM	202-324-0878	WASHINGTON DC	18 RM45	DT	0.00	0.00	0.00
				2 MME0	DT M2MC	0.00	0.00	0.00
				4 MME0	DT M2MC	0.00	0.00	0.00
				1 MME0	DT M2MC	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				2 MME0	DT M2MC	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				2 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				1 RM45	DT	0.00	0.00	0.00
				4 5KNW	NW	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				51 5KNW	NW	0.00	0.00	0.00
				3 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				6 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00
				2 5KNW	NW	0.00	0.00	0.00
				3 5KNW	NW	0.00	0.00	0.00
				1 5KNW	NW	0.00	0.00	0.00

					2 5KNW	NW		0.00	0.00	0.00
					2 5KNW	NW		0.00	0.00	0.00
					2 5KNW	NW		0.00	0.00	0.00
					1 5KNW	NW		0.00	0.00	0.00
					1 5KNW	NW		0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					1 MME0	DT	M2MC	0.00	0.00	0.00
					2 MME0	DT	M2MC	0.00	0.00	0.00
					6 5KNW	NW		0.00	0.00	0.00
189	TUE	06/30/2009	9:17AM	202-324-0878	WASHINGTON DC	1 RM45	DT	0.00	0.00	0.00
190	TUE	06/30/2009	10:48AM	202-324-0878	INCOMING CL	2 RM45	DT	0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					5 RM45	DT		0.00	0.00	0.00
					4 MME0	DT	M2MC	0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					1 5KNW	NW		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					2 MME0	DT	M2MC	0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					1 MME0	DT	M2MC	0.00	0.00	0.00
					2 RM45	DT		0.00	0.00	0.00
					5 RM45	DT		0.00	0.00	0.00
					1 RM45	DT		0.00	0.00	0.00
					9 RM45	DT		0.00	0.00	0.00
Totals					751			0.00	0.00	0.00

Data Detail

User Name :

Rate Code: CMB1=MEDIA MAX UNL MNET, MSG5=IPHONE TXT MSG 200

Rate Period (PD): AT=Anytime

Feature: GPRR=GPRS \$0.00 rate APN002, SMH=SMS \$0.10 MO/MT

Item	Day	Date	Time	To/From	Type	Msg/KB/Min	Rate Code	Rate Pd	Feature	In/Out	Total Charge
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					Text Message	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	In	0.00
					MTM TEXT MESSAGE	1 Msg	MSG5	AT	SMH	Out	0.00

EXHIBIT D

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/mce*
Kosh Valrie R *[signature]*

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 [redacted] 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), [redacted] (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 [redacted] 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 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 Grahm 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.'

(K)



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 E

Presentation Conducted By: Abby M. Halle

Date of Board: _____

Applicant's/Candidate's Name: _____

File #: 67B-HQ- _____

DOB: _____

POB: (if foreign-born, provide naturalization information): _____

Original Recommendation/Date of Adjudicative Summary: Discontinue/06/30/2009

Summary of Case: (include issues, mitigation, etc.)

Applicant has been employed as a lawyer since _____ In May 2008 (1 year 5 months ago), the applicant disclosed that he assisted in negotiating the price of a marijuana purchase between two friends. The applicant stated that he "acted as a 'representative' of the buyer of the marijuana to the seller." The applicant stated that "he was involved in the decision to travel to the house to buy the drugs, and the negotiation of the purchase price." OGC was contacted in regards to this issue, and stated that the applicant is a lawyer and was acting as a lawyer when he engaged in the behavior, and therefore recommended that he be discontinued. Additionally, 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 disregard for this legal/ethical obligations as a lawyer." Additionally, the applicant disclosed that from 2006-2008, alcohol had a negative impact on the applicant's work performance, due to the applicant arriving to work hung over from drinking too much. This would make the applicant unable to work as many hours in a day as usual and the applicant would become irritable. The applicant also disclosed that he would occasionally need to take a morning or a whole day off because of this. The applicant stated that "he believes that he was drinking to escape the pressure and demands of his career."

Current Recommendation: Discontinue

Basis for conclusion:

The applicant partook in a criminal activity, while under oath as a lawyer to uphold his legal/ethical obligations. OGC was contacted in regards to this issue and recommended discontinuance. Additionally, due to the pressure and demands of the applicant's employment as a lawyer, the applicant turned to alcohol, which negatively impacted his work performance. The issues above can not be mitigated, due to the fact that both happened in the recent past.

Board's Decision: _____

Unit Representative

Date

Program Manager

Date

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

[REDACTED]

January 3, 2010

Federal Bureau of Investigation
Office of Professional Responsibility
Attn: Assistant Director Candice M. Will
935 Pennsylvania Ave. NW
Washington, D.C. 20535

Re: Special Agent Applicant File #67B-HQ-[REDACTED]
[REDACTED]

Subject: Complaint

Dear Assistant Director Will,

Applicant respectfully references his letter to the Assistant Director dated 12/19/2009. Applicant has not heard back and so files this complaint from a preliminary reading of section 263—Office of Professional Responsibility Matters of the Manual of Investigative Operations and Guidelines.

Applicant cites MIOG § 263-2(5), which contains a list of matters that are considered OPR matters. Two such matters are “False statements during applicant processing” and “Falsification of documents.”

This complaint is a summary containing three counts, supported by the attached declaration. Additional evidence and clarification are available upon request. This complaint is not Applicant’s appeal to the Adjudication Review Board, which will be a separate document.

I. Count One—False Statements During Applicant Processing

Applicant alleges Special Agent Graham Coder of the Special Agent Clearance Unit made false statements in a FD-302 that formed the basis for the negative suitability determination of Applicant dated 6/30/2009.

Specifically, SA Coder represented to the FBI in the enclosed FD-302 that Applicant stated he was involved in various aspects of a May 2008 drug transaction. This led the Analyst and the Office of General Counsel to discontinue Applicant, because they concluded Applicant was a party to a drug purchase and that Applicant acted as the attorney of a drug purchaser in violation of California law. The statements and representations made in the FD-302 were false statements and representations.

The evidentiary support is fairly straightforward. Four Special Agents heard or read the same information. Three of these Special Agents—the reviewer of Applicant’s SF-86, the PSI agent, and the polygraph examiner—each independently wrote that Applicant merely “accompanied a friend” or was “present” when a friend purchased less than \$100 of marijuana from another friend. This is not a crime or an ethical violation for an attorney under California law, or a crime under Federal law. The fourth Special Agent is SA Coder, and his version of the facts contradicts that developed by the other three agents.

At least one Supervisory Special Agent, who reviewed the polygraph report stating that Applicant was present during the transaction, decided to “CONTINUE” Applicant’s processing. It was officially determined at the polygraph that Applicant was telling the truth when Applicant advised he was merely present, then excused himself prior to a crime occurring.

With only the false statements in the FD-302 to review, it is not surprising that OGC was angry that an attorney applicant was reportedly a party to a drug purchase in the recent past. OGC’s legal opinion based on the false statements appears to have been obtained to insulate SA Coder and Analyst Abby M. Halle from responsibility for Applicant’s discontinuation, because OGC’s legal opinion figures prominently in Ms. Halle’s Adjudicative Recommendation.

The FD-302 and the re-publication of its false statements by the Analyst, an unnamed OGC attorney, and the Acting Unit Chief has created a potential libel claim under California law against each of these personnel, for which they most likely do not have immunity under the Tort Claims Act.

Applicant asserts a violation of MIOG § 67-7.7(4) (“Investigation must be painstakingly exact, fair, unbiased.”) and various other portions of section 67. Because OGC and/or the FOIPA office continue to suppress the administrative manual from Applicant, Applicant is unable to cite the portion of the administrative manual that Applicant anticipates contains standards for honesty applicable to Special Agents. Instead, Applicant cites *Ludlum v. Department of Justice* (2002) 278 F.3d 1280.

In *Ludlum v. Department of Justice*, a Special Agent was fired for a lack of candor in reporting the number of times he had picked up his daughter from day care using his Bureau car. The sanction was reduced on appeal to a 120 day suspension.

A quote from the Manual of Investigative Operations and Guidelines follows:

No work is more important than properly interviewing, evaluating and investigating applicants for the Special Agent (SA) position with the FBI.

67-95 MIOG § 67-17.1(1) .

Applicant requests an OPR investigation into why SA Coder falsified what Applicant said to him. From the available information, Applicant concludes that SA Coder simply did not

like Applicant because Applicant laughed at one of SA Coder's questions, and SA Coder wished to ensure Applicant's disqualification prior to the full background investigation. Applicant can think of no possible excuse or mitigating factor for falsifying what Applicant said.

II. Count Two—False Statement/Willful Blindness

SA Coder's FD-302 contains the implied representation that he conducted an investigation in accordance with the FBI manual. The manual requires a Special Agent who is conducting an applicant investigation to "pursue every lead to its logical conclusion." MIOG § 67-7.7(7).

SA Coder asked for and/or obtained at least three leads from Applicant that SA Coder failed to pursue to their logical conclusions:

1. On 6/25/2009, SA Coder asked for contact information for Applicant's friend [REDACTED] one of the parties in the drug transaction, for verification purposes. SA Coder never contacted [REDACTED] and [REDACTED] information is omitted from SA Coder's FD-302.
2. On 6/30/2009, SA Coder asked for contact information for Applicant's friend [REDACTED] the second of the two parties in the drug transaction, for verification purposes. SA Coder never contacted [REDACTED] and [REDACTED] information is omitted from SA Coder's FD-302.
3. Immediately after the 6/25/2009 phone interview, Applicant sent an email message to SA Coder with follow up information that SA Coder had asked for. Applicant expressly directed SA Coder to the polygraph examiner's report and notes. Applicant anticipated that the report and notes would include the fact that Applicant was merely present and excused himself prior to a crime occurring. SA Coder did not file the email in the file or mention this or the polygraph examination in his FD-302.

SA Coder failed to pursue any of these leads. Essentially, he and the Analyst took a "wait and see" approach; if OGC came back with an opinion that Applicant was involved in the subject transaction—based on SA Coder's version of the facts—SA Coder and the Analyst thought they wouldn't have to contact the two witnesses. Both witnesses have since confirmed that Applicant was not involved in the subject transaction.

At the time of the 6/25/2009 and 6/30/2009 phone interviews, Applicant had never spoken with either [REDACTED] or [REDACTED] about the incident. After Applicant's discontinuation, Applicant contacted both witnesses on two separate occasions—July 2009 and November 2009. On each occasion, both parties advised Applicant that Applicant was not involved in the transaction at all and should never have reported it in his SF-86.

Applicant's friend [REDACTED] also advised Applicant that [REDACTED] had a Medical Marijuana license under California law at the time of the incident. At worst, [REDACTED] breached the terms of his license by sharing his legally obtained marijuana with [REDACTED]. Even if Applicant was involved, the fact that Medical Marijuana was involved greatly reduces any potential impropriety by Applicant in the transaction. Had SA Coder actually contacted the witnesses he asked for, this Applicant would have been completely exonerated.

The representation that a proper investigation was conducted by SA Coder is false. By

making false and misleading statements and willfully failing to pursue leads as required in the manual, Special Agent Coder manipulated the Office of General Counsel into disqualifying Applicant.

The damage caused by SA Coder includes barring this Applicant from serving any agency of the Federal government, because no agency is interested in an applicant who is reported to be a criminal and unethical attorney with poor judgment in a recent incident. This damage was compounded by the Analyst's failure to report mitigating information in her Adjudicative Recommendation of 6/30/2009—Applicant's favorable ethical choices in two separate incidents involving serious ethical dilemmas, one of which occurred during the very time period in which Applicant was interviewed at Phase II and submitted his SF-86. Applicant was rejected by the CIA, his second choice, after the CIA interviewer asked about the end of Applicant's FBI application.

SA Coder has created a claim under 42 U.S.C. sec. 1983 against at least himself. The anticipated basis is SA Coder's violation of Applicant's right to due process in the pursuit of Federal employment, because an investigation conducted in accordance with the FBI manual would have exonerated Applicant.

III. Count Three—Falsification of Investigative Record

Applicant contends that Special Agent Coder falsified an investigative record by backdating a FD-302, to give the appearance that information written during or after Applicant's discontinuation was developed before Applicant's discontinuation.

Applicant was interviewed by telephone twice; once on 6/25/2009 and once on 6/30/2009. Applicant also exchanged a number of email messages with SA Coder in order to answer SA Coder's questions. The email messages are not mentioned in SA Coder's FD-302 or filed in the file, even though information from the messages is contained in the FD-302.

The backdated FD-302 represents that two separate telephone interviews and multiple email messages from 6/25/2009 to 6/30/2009 all occurred in a single telephone interview on 6/25/2009. Anyone reading the file would conclude that all of the information was developed in the 6/25/2009 conversation. This is important because of the timing of contacts with OGC regarding the incident. There is also no indication in the FD-302 that information beyond the 6/25/2009 conversation was developed. For example, Applicant expressly referenced his polygraph examination and the examiner's notes.

Backdating the document appears to have allowed Special Agent Coder to conform his FD-302 to a curbstone opinion of law given by the Office of General Counsel, so that it would appear SA Coder had developed the information prior to the legal opinion being given. This is significant because the legal opinion could only have applied to facts that were available at the time the opinion was made. The FD-302 is a false investigative record and this can be confirmed through electronic data, SA Coder's time records, phone records, and other means.

The enclosed declaration provides evidentiary support. Applicant would also be pleased

to take a supplemental polygraph examination on any of the matters stated herein. Applicant awaits contact from the Assistant Director's office.

Sincerely,

cc: Applicant Coordinator
FBI San Francisco

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[REDACTED]

Applicant

United States of America
Department of Justice
Federal Bureau of Investigation

[REDACTED]

Applicant,

v.

United States Department of Justice,
Agency.

) Case No. 67B-HQ [REDACTED]
)
) DECLARATION OF [REDACTED]
) [REDACTED] IN SUPPORT OF OFFICE
)
) OF PROFESSIONAL RESPONSIBILITY
) COMPLAINT
)
) Filed: January 3, 2010
)
)
)

File #67B-HQ-[REDACTED]

Declaration of [REDACTED]

1 I, [REDACTED], declare as follows:

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

5 **SYNOPSIS**

6 2. This summarizes an incident that I reported in my SF-86, and what I reported to
7 FBI personnel at the Personnel Security Interview and Polygraph Examination.

8 3. In May 2008, At the suggestion of my college friend [REDACTED] with whom I was
9 staying for the weekend for an event, I accompanied [REDACTED] to our mutual friend [REDACTED] house.
10 [REDACTED] intended to purchase a small amount of marijuana (less than \$100), and I intended to
11 visit with [REDACTED] [REDACTED] was not a drug dealer, but he did keep extra marijuana around to share with
12 friends. While on the way over to [REDACTED] place, [REDACTED] lamented about [REDACTED] eccentric behavior
13 concerning prices, and I half-jokingly offered [REDACTED] a few tips in negotiating that I had picked
14 up in a recent mediation at work. [REDACTED] said he would like it if I could act as his representative.
15 When we got to [REDACTED] I initially attempted to act as some type of intermediary with [REDACTED] but
16 I ended up embarrassing myself because I know little to nothing about drugs, and I was not
17 taken seriously. I excused myself, which is why I used the phrase "I believe" in my SF-86
18 attachment—I had no personal knowledge of what [REDACTED] and [REDACTED] agreed on or of any crime that
19 may have occurred. I did not use any of the marijuana. I did not contribute in any fashion to the
20 purchase, financially or otherwise.

21 4. I reported this as being "involved" in a drug transaction when responding to
22 questions in his SF-86. My original SF-86 attachment is attached as Exhibit 1. I later learned
23 from both [REDACTED] and [REDACTED] that I was wrong about being involved, and I was not involved in
24 this transaction. Supporting this, even my original attachment stops short of saying I had any
25 substantive role in the transaction.

26 //

27 //

1 **THE SF-86**

2 5. The Special Agent who reviewed my SF-86 shortly after I submitted it on
3 5/17/2009 wrote a handwritten sheet of notes, which are attached as Exhibit 2. The Special
4 Agent wrote "In May 2008 Applicant ~~assisted~~ accompanied a roommate to purchase marijuana,
5 but did not smoke." The agent clearly understood the statement, as he crossed out the word
6 "assisted" on his notes before writing that I merely accompanied my friend [REDACTED]

7 **PERSONNEL SECURITY INTERVIEW**

8 6. The Personnel Security Interviewer heard substantially the same information, and
9 [REDACTED] wrote in the PSI Form that I "Accompanied a friend who was buying marijuana." This page
10 is attached as Exhibit 3.

11 7. Also at the PSI, I filled out the illegal drug use questionnaire, which is attached as
12 Exhibit 4. I answered "no" for the question "Did you ever buy?"

13 **POLYGRAPH EXAMINATION**

14 8. The polygraph examiner heard all of the above information, including the key
15 fact that I was not present when any crime occurred, because I had excused myself. Under
16 appropriate questioning directed to whether I had "lawyered" my SF-86 attachment, I explained
17 to the examiner that this is why I used the phrase "I believe." Because I did not have personal
18 knowledge of what happened after I left. The examiner wrote in the report: "Applicant
19 was present in 2008 when a friend purchased less than \$100 of marijuana." A Supervisory
20 Special Agent appears to have approved the report and my continued processing, circling the
21 "CONTINUE" directive on 6/12/2009. The report is attached as Exhibit 5.

22 **SPECIAL AGENT CODER**

23 **A. 6/25/2009 Phone Interview**

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

26 10. SA Coder stated that he was "temporarily assigned to move the case forward" and
27 that my background investigation "should be starting soon." SA Coder explained that his job

1 was to act as a central repository for information coming in from the field during my background
2 investigation. SA Coder described the background investigation in a manner that indicated that
3 SA Coder was in charge of the background investigation.

4 11. SA Coder then launched into questions about the May 2008 incident reported in
5 my SF-86. After establishing that I did not use any of the marijuana purchased by my friend
6 [REDACTED] or contribute any money to the purchase, SA Coder attempted to get me to change my
7 answer by pretending to be my friend. He stated “it’s ok, you can tell me” in a sympathetic
8 voice. I cannot change the truth and I did not change my answer. I did not use any of the
9 marijuana, and I am in compliance with the FBI’s policy on drug use stated on its web page and
10 in the FBI manual.

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

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

13 13. I reflexively laughed at this ambiguous question. This is like asking someone,
14 “when did you stop beating your spouse?” I have heard, read, and/or responded to hundreds of
15 these types of questions or statements in my career as an attorney. Questions such as these are
16 commonly used at depositions in order to—if the defending attorney fails to object—cause the
17 witness to make unintended admissions that are later used against him. In this case, SA Coder’s
18 question inappropriately combined my decision to go to the house with [REDACTED] decision to buy
19 the drugs. If I answered “yes,” it would later be claimed that I had decided to buy the drugs. If I
20 answered “no,” I would have denied deciding to go to the house, which would not be true. This
21 is why I did not answer the question.

22 14. Despite me not answering his question, SA Coder states in his FD-302 “[h]e said
23 that he was involved in the decision to travel to the house to buy the drugs” This is a false
24 statement because I never answered his question, and I said nothing that could stand for this
25 proposition.

26 15. The statement that I “traveled with a friend to another friend’s house for the
27 purpose of buying marijuana” is also a false statement, because my purpose was to visit with

1 [REDACTED] not buy marijuana. This is clearly indicated in my SF-86.

2 16. After I responded to SA Coder's initial question with a mild laugh, he withdrew
3 the question. Instead of asking me questions that would establish the propositions stated in his
4 FD-302, he said "let's do it this way" and he proceeded to read my SF-86 attachment aloud,
5 and then ask me whether it was true. What could I say? That I filed a false statement with
6 my application? Of course my SF-86 statement is true—but it stops short of admitting any
7 substantive role in the transaction. SA Coder did not ask me follow up questions after he read
8 my statement to me, so I had no chance to add more information.

9 17. Essentially, with his FD-302 SA Coder has filled in all the gaps in my SF-86
10 attachment in his favor, with his own version of the facts that goes far beyond what I originally
11 wrote, and far beyond what I actually said to him and other FBI personnel.

12 18. SA Coder did not ask me whether I assisted in negotiating the price of the
13 marijuana purchase between my friends. I did not tell him that I assisted in negotiating the price
14 of the marijuana purchase between my friends.

15 19. SA Coder did not ask me whether I acted as a "representative" of the buyer of the
16 marijuana to the seller. I did not tell him that I acted as a representative of the buyer to the seller.

17 20. SA Coder did not ask me whether I was involved in the negotiation of the
18 purchase price. I did not tell him that I was involved in the negotiation of the purchase price.

19 21. Instead of asking me these questions, SA Coder read my own written statement
20 to me. No new information about the May 2008 incident was developed in our phone
21 conversations. Had SA Coder actually asked me these questions, I would have answered "no" to
22 each of them.

23 22. I did not assist in the negotiation of the price of the marijuana purchase between
24 my friends. As stated in my SF-86, my comments to [REDACTED] about the price and what [REDACTED] was
25 willing to pay were not taken seriously, because I know little to nothing about drugs.

26 23. I did not act as an attorney for either party in this transaction. I had advised [REDACTED]
27 on the way over to [REDACTED] house that I could not act as his attorney, because an attorney may not

1 advise a violation of law. We both understood that. Under California law, an attorney-client
2 relationship is only created by the agreement of both parties. No attorney-client relationship was
3 created here, and this is one reason I did not assert the attorney-client privilege in response to
4 Question 23 of the SF-86.

5 24. I have prepared my own FD-302 of the 6/25/2009 conversation, which is attached
6 as Exhibit 6.

7 25. I mistakenly answered "yes" to Question 23 of the SF-86 regarding involvement
8 in the illegal handling, purchase, delivery, etc. of drugs. In addition to my personal knowledge,
9 I confirmed this with both of my friends who were there. Both [REDACTED] and [REDACTED] advised me on
10 two separate occasions in July 2009 and November 2009 that I was not involved, that I should
11 not have reported that I was involved, and that they did not consider me to be involved. [REDACTED] also
12 advised me that he had a Medical Marijuana license at the time of the incident.

13 26. [REDACTED] and [REDACTED] are available at any time to set the record straight. Their contact
14 information follows:

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

19 27. I have not asked either of my friends to "cover" for me in any fashion. I have not
20 provided them this declaration, information on its contents, or (at this writing) any written matter.

21 28. On 6/25/2009, SA Coder asked me for both [REDACTED] and [REDACTED] contact information.
22 I told him that [REDACTED] information was in my SF-86 roommate attachment, and that I would
23 have to look up [REDACTED] SA Coder put me on hold for a few moments, then came back on and told
24 me that was fine and that he did not need [REDACTED] information at that time.

25 29. I could not at the time figure out why SA Coder only read my written statement
26 to me without asking further questions. In an email message to SA Coder with follow up
27 information, I suggested that he check with the polygraph examiner or look at his report, because

1 my Attachment 23 and the incident was discussed in detail at the polygraph. I didn't say more
2 because I as an applicant am not supposed to tell a Special Agent how to do his job.

3 **B. 6/30/2009 Phone Interview**

4 30. I had two separate phone conversations with Special Agent Coder. One on
5 6/25/2009, and one on 6/30/2009. The 6/30/2009 conversation included information on software
6 downloading I did when I was a minor and in college, which is a paragraph on the first page of
7 the FD-302 dated 6/25/2009. SA Coder also asked me for [REDACTED] contact information, and I sent
8 SA Coder an email message on 6/30/2009 with my friend [REDACTED] contact information. Neither this
9 email message nor any reference to [REDACTED] information appear in SA Coder's FD-302.

10 31. The key take-home point here is that I never told SA Coder any of the statements
11 attributed to me in the first paragraph on page two of his FD-302. He read my own statements to
12 me, then made up his own version of the facts, and this version appears to be what was used to
13 disqualify me.

14 **C. Other False Statements in the FD-302**

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

22 33. "He stated that he has illegally downloaded commercial computer application
23 software" This entire paragraph is from our 6/30/2009 phone conversation, not our
24 6/25/2009 phone conversation. The FD-302 could not have been written, dictated, transcribed,
25 or initialed on 6/25/2009 like it claims to be.

26 34. "He stated that there are no pending issues related to the [REDACTED]
27 [REDACTED] and the improper reimbursement procedures." This

1 issue was not mentioned at all during either phone conversation. SA Coder sent me questions on
2 this issue by email after our 6/25/2009 phone conversation, and I answered them. The subject
3 did not come up again.

4 35. I have attached all of the pre-rejection emails I exchanged with SA Coder as
5 Exhibit 7. I note that the file does not contain any of these email messages, even though the
6 information is relevant and much of it forms the basis for the FD-302. Please note the amount of
7 detail provided in my effort to be cooperative and forthcoming.

8 CALIFORNIA LAW AND MEDICAL MARIJUANA

9 36. As an attorney licensed under California law, I am qualified to give an opinion of
10 the legality of my actions in May 2008 under the law of my State.

11 37. I note that Director Robert S. Mueller III of the FBI is licensed to practice law
12 in California, but attorney Edward M. Broussard of the Office of General Counsel is not. The
13 Director's State Bar web page, however, shows that his license is on inactive status.

14 38. My professional opinion of the law of my State follows.

15 39. I was not a party to the transaction between [REDACTED] and [REDACTED]

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

18 41. I did not commit any crime in the May 2008 incident.

19 42. I have not studied the law of Medical Marijuana and cannot offer an opinion at
20 this time as to whether or how severely [REDACTED] violated the terms of his Medical Marijuana license
21 by sharing his legally obtained marijuana with [REDACTED]

22 43. I committed no ethical violation in the May 2008 incident, because no attorney-
23 client relationship was created. Ethical duties in California only arise from an attorney-client
24 relationship, not personal life conduct, unless otherwise stated in the Rules of Professional
25 Conduct. For example, a sexual relationship with a client is prohibited unless the relationship
26 pre-dated the attorney's representation of the client.

27 44. As an attorney in California, I have a general duty to "uphold" the law and not

1 commit felonies involving moral turpitude. Business & Professions Code sec. 6068. Upholding
2 the law means, among other things, giving full faith and credit to judgments of any court;
3 obeying the orders of any judge; not misleading a judge or jury with a false statement of law;
4 and not claiming that a particular law is invalid unless there is a non-frivolous argument to the
5 contrary. See Rule of Professional Conduct 5-200.

6 45. Being present when a friend purchases a small amount of marijuana is not an
7 offense at all, much less one involving moral turpitude.

8 46. Moral turpitude means dishonesty or some other serious offense. For example,
9 the [REDACTED] series of polygraph questions that I was asked would be offenses involving
10 moral turpitude under California law. My answers are included as well as the basis for moral
11 turpitude:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 47. The Supreme Court of California and its subordinate, the State Bar Court, are
21 the only authorities in California that may impose professional discipline on an attorney. An
22 attorney license in California is a property right, and an attorney has due process rights with
23 regard to his license.

24 48. I am not a prosecutor or law enforcement officer, and so I am not required to
25 “enforce” the law or remove myself from unlawful situations involving others. I am not required
26 to prevent anyone else from breaking the law. I am also not required to report violations of law.

27 49. The law of simple possession of marijuana in California is generally not enforced

1 in [REDACTED] California where the May 2008 incident occurred, unless some more serious
2 offense occurs in combination. When punished, the offense of simple possession is punishable
3 by a statutory maximum \$100 fine, mandatory diversion, and no jail time or even "booking."
4 Health and Safety Code sec. 11357(b). In other words, it is punished less severely than a
5 speeding ticket. The statute of limitations on any crime committed by [REDACTED] in the May 2008
6 incident ran in May 2009 at the latest. No one was charged, investigated, or otherwise.

7 50. I was not an applicant to the FBI or any other law enforcement agency or
8 prosecuting attorney's office in May 2008. I would be pleased to live up to the standards
9 required of Special Agents if hired.

10 51. Nevertheless, I freely admit that it was not a good idea to even be present for
11 the May 2008 incident. But if I am going to be judged, I want to be judged for the words that I
12 actually say and write, not the version of the facts that someone else puts in my mouth.

13 52. Special Agent Coder has created a libel claim under California law against
14 himself, the Analyst, the Acting Unit Chief, and probably the OGC attorney who gave the
15 curbstone opinion of law about the incident. This is because the Analyst, Acting Unit Chief,
16 and OGC attorney re-published the false statements from the FD-302 when they had conflicting
17 information in the file and available to them.

18 53. The OGC attorney's curbstone opinion of California law is wrong, and it could
19 result in a claim for malpractice if given to a client in California.

20 54. I am sorry that I laughed at the question SA Coder asked me. I could not help it
21 because it was exactly the type of question I have dealt with in my career, and [REDACTED]

22 [REDACTED] Please see Exhibit 8.
23 My laughing was not a judgment of SA Coder, merely an observation on his question.

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

26 Date: 1/3/2010 [REDACTED]

Attachment 23. to SF-86: Illegal drugs

[REDACTED] [REDACTED]

#1 In May 2008, while visiting [REDACTED] 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 [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 [REDACTED] 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] eccentric behavior concerning prices, and the drama that goes with it. So when (P-1) [REDACTED] and I arrived at [REDACTED], 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. (P-1) [REDACTED] ultimately purchased the marijuana and I believe he and [REDACTED] directly agreed on the terms.

[REDACTED]

(4)

(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 5/29/2009 on amicable 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 ~~asserted~~ accompanied a roommate to purchase Marijuana, but did not smoke.

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

5/19/2009

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

M. Alcohol/Drugs

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

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

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

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

4. Have you ever abused any over the counter products, sniffed gasoline, huffed aerosol products, abused nitrous oxide gas or helium, chewed khat (stimulant leaf) or sniffed paint/glue?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes – If so, explain.
---	---

5. Have you ever been involved in the purchase, manufacture, trafficking, production, transfer, shipping, distribution, receiving or sale of illegal drugs?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If so, provide details below as to what type, when, amount, where – public or private, how did you obtain the drugs, who else knows of the drug use, purchase, manufacture, trafficking, transfer, shipping, distribution, receiving or sale of illegal drugs?
---	--

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

(If necessary, provide attachment of additional information)

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

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

Applicants MUST provide drug usage information covering their entire life.

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

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

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

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

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

Details:

please see SF-86 Attachments.

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

Details:

Applicant Initials _____

Exhibit 4

FEDERAL BUREAU OF INVESTIGATION
POLYGRAPH REPORT

Benson

REVIEWED BY: SSA Ray Lauer <i>RGL</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- [redacted] - 5
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:

BUAP-SUPPORT
PRE-EMPLOYMENT POLYGRAPH EXAMINATION

Case Synopsis/Examiner's Conclusion:

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

(H) [redacted]

On June 9, 2009, the applicant, [redacted] came to the 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) [redacted]

Examiner's Name SA [redacted] *RGL*

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

Exhibit 5

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 06/25/2009

On June 25, 2009, (applicant), telephone number , was interviewed telephonically by SA Grahm L. Coder (the author). 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 from applicant's other friend . Applicant denied contributing money or otherwise to '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 was identified in applicant's roommate attachment. Applicant advised that he would need to look up contact information for . This author advised applicant that '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 of the San Francisco Field Office, who conducted applicant's polygraph examination, was contacted. SA 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- Date dictated 06/25/2009
 by SA Grahm L. Coder **SAMPLE**

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Exhibit 6

67B-HQ-

Continuation of FD-302 of _____, 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.



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Government	Percentage
Current government	75%
Previous government	25%

[illegible]

Age Group	Percentage
18-24	28%
25-34	22%
35-44	18%
45-54	15%
55-64	12%
65-74	8%
75-84	5%
85+	2%

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Best,

[REDACTED]

Follow up items for FBI app.

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:

[REDACTED]

Re: Follow up items for FBI app.

Subject: Re: Follow up items for FBI app.

From: [REDACTED]

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

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

Hi Grahm,

Please see interlineations after each requested item.

Best,

[REDACTED]

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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Follow up items for FBI app.

[REDACTED]

Best,

[REDACTED]

Subject: Background information

From: [REDACTED]

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

To: graham.coder@ic.fbi.gov

Hi Graham,

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: [REDACTED]

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

To: grahm.coder@ic.fbi.gov

Hi Graham,

[REDACTED]'s contact information is:

[REDACTED]

Thanks,

[REDACTED]

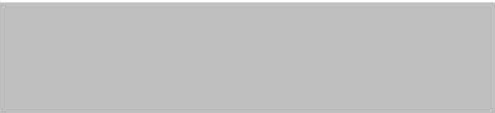


Exhibit 8

[REDACTED]

January 23, 2010

Federal Bureau of Investigation
Office of Professional Responsibility
Attn: Assistant Director Candice M. Will
935 Pennsylvania Ave. NW
Washington, D.C. 20535

Re: Special Agent Applicant File #67B-HQ-[REDACTED]
[REDACTED]

Subject: Addendum to Complaint

Dear Assistant Director Will,

Applicant respectfully references his complaint to the Assistant Director dated 1/3/2010.

The enclosed declaration of witness [REDACTED] provides the information that would have been developed had Special Agent Graham Coder pursued the lead he asked for to its logical conclusion as required in the Manual of Investigative Operations and Guidelines.

As the Assistant Director can see, Mr. [REDACTED]'s account completely contradicts SA Coder's FD-302:

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 simply agreed to go."
"He stated that he assisted in negotiating the price of the marijuana purchase between the friends."	"Mr. [REDACTED] was not involved and did not assist in the 'negotiation' of the purchase price between me and [REDACTED]"
"He stated that he acted as a 'representative' of the buyer of the marijuana to the seller."	"Mr. [REDACTED] did not act as my representative or attorney."

Mr. [REDACTED] continues: "No one with any knowledge of drugs would consider Mr. [REDACTED] to have been involved in this transaction, and he should have asked me before reporting this."
"Mr. [REDACTED] was not involved in the transaction. Neither I nor [REDACTED] considered Mr. [REDACTED]"

to be involved.” “Mr. [REDACTED] was, at worst, comic relief to me and [REDACTED] due to Mr. [REDACTED] ignorance of drugs.” “Mr. [REDACTED] excused himself and was not present when [REDACTED] and I actually came to our agreement and exchanged the marijuana.”

This Applicant is calling out Special Agent Graham Coder for making false statements to the FBI and manipulating the process to ensure this Applicant’s disqualification.

Sincerely,

[REDACTED]

[REDACTED]

cc: Applicant Coordinator
FBI San Francisco

EXHIBIT G

Subject: Re: Complaint dated 1/3/2010
From: "Will, Candice M." [REDACTED]
Date: Thu, 5 Aug 2010 11:02:15 -0400
To: [REDACTED]

Dear Mr. [REDACTED]

I do not have jurisdiction over complaint intake or the initiation of an investigation. That is the province of the FBI's Inspection Division and/or DOJ's Office of the Inspector General. With your permission, I will forward your email to those entities for their further consideration/response.

Candice Will

----- Original Message -----

From: [REDACTED]
To: Will, Candice M.
Sent: Thu Aug 05 10:35:54 2010
Subject: Complaint dated 1/3/2010

Dear Assistant Director Will,

On January 3, 2010, I sent you a complaint and supporting declaration regarding false statements made by a Special Agent during my applicant processing, and other misconduct. This is a matter within OPR's authority under section 263-2(5) of the investigative manual.

On January 23, 2010, I supplemented the complaint with a percipient witness declaration confirming that the conduct falsely attributed to me by the Special Agent in question did not occur.

I was disqualified from the FBI and later the CIA due to his false statements. I seriously doubt that I can ever work for a government agency, having been officially determined by the FBI to be a criminal and unethical attorney. But the disconcerting fact that a single Special Agent can choose to do this to an applicant is a separate issue.

May I respectfully ask for the status of this matter? I understand that the DOJ Office of the Inspector General has concurrent jurisdiction of such complaints, but I thought perhaps the complaint might be in a backlog of some type or otherwise not come to your attention.

I apologize for the presumption of emailing you directly, but this matter is important to me and to others with whom I have discussed it.

Sincerely,

[REDACTED]

Subject: Re: Complaint dated 1/3/2010

From: "Lyons, Amy Jo" [REDACTED]

Date: Thu, 5 Aug 2010 17:27:58 -0400

To: [REDACTED]

[REDACTED], Please send it though UC Sandy Bungo. Thank you, Amy Lyons

----- Original Message -----

From: [REDACTED]

To: Lyons, Amy Jo

Sent: Thu Aug 05 17:09:22 2010

Subject: Re: Complaint dated 1/3/2010

Thank you-

It is an ethical matter, it involves dishonest conduct, it brings disrepute on the FBI, it has been ignored at multiple levels of the chain of command and in different components of the FBI (including, ahem, OPR), and another similarly situated and similarly qualified applicant was subjected to the same dishonest conduct by a different Special Agent working in the very same unit-- SACU.

The conduct violates your organization's core value of Integrity, not to mention the "bright line" rule, and if proved could be used to get criminals new trials even if they really are guilty.

The conduct also involves the manipulation of the Office of General Counsel of the FBI, which I consider even more serious than the underlying violation.

I have already assembled a pretty good case that a retired 20 year veteran of the FBI and about 10 other people consider to be persuasive.

I therefore consider the matter very serious, and it should probably not wait.

Would you like a copy of the new complaint when it is ready? I don't know how much of my original complaint may have made it into my applicant file, or for that matter the "zero" file at OPR. Best,

[REDACTED]
Sent from my iPhone

On Aug 5, 2010, at 1:33 PM, "Lyons, Amy Jo" [REDACTED] wrote:

[REDACTED],
No issue with the delay unless this involves a very serious violation such as a criminal or ethical matter, that causes serious harm to an individual or the organization. Otherwise, send it in when you are ready. Thank you, Amy

----- Original Message -----

From: [REDACTED]

To: Lyons, Amy Jo

Sent: Thu Aug 05 16:28:23 2010

Subject: Re: Complaint dated 1/3/2010

Thank you. It might be a while, as FOIPA litigation is involved and I haven't decided how much more proof is really necessary. Best,

[REDACTED]

Sent from my iPhone

On Aug 5, 2010, at 1:19 PM, "Lyons, Amy Jo" [REDACTED] wrote:

[REDACTED],
You should send your complaint to the Internal Investigation Section, Attn: Unit Chief Sandy Bungo. Hope this helps.
Amy Lyons

----- Original Message -----

From: [REDACTED]
To: Lyons, Amy Jo
Sent: Thu Aug 05 16:06:05 2010
Subject: Fwd: Fwd: Re: Complaint dated 1/3/2010

----- Original Message -----

Date: Thu, 05 Aug 2010 08:41:51 -0700
From: [REDACTED]
To: [REDACTED] "Will, Candice M."
Subject: Fwd: Re: Complaint dated 1/3/2010

Dear Assistant Director Lyons,

This concerns a complaint and supporting evidence that I had previously sent to the Office of Professional Responsibility in January 2010. Assistant Director Will indicates that OPR is not the right recipient for intake purposes.

May I ask to whose attention in your division I should address my amended complaint?

Sincerely,

[REDACTED]

----- Original Message -----

From: Will, Candice M. [REDACTED]
To: [REDACTED]
Date: Thu, 5 Aug 2010 11:02:15 -0400
Subject: Re: Complaint dated 1/3/2010

Dear Mr. [REDACTED]

I do not have jurisdiction over complaint intake or the initiation of an investigation. That is the province of the FBI's Inspection Division and/or DOJ's Office of the Inspector General. With your permission, I will forward your email to those entities for their further consideration/response.

Candice Will

----- Original Message -----

From: [REDACTED]
To: Will, Candice M.
Sent: Thu Aug 05 10:35:54 2010
Subject: Complaint dated 1/3/2010

Dear Assistant Director Will,

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I was disqualified from the FBI and later the CIA due to his false statements. I seriously doubt that I can ever work for a government agency, having been officially determined by the FBI to be a criminal and unethical attorney. But the disconcerting fact that a single Special Agent can choose to do this to an applicant is a separate issue.

May I respectfully ask for the status of this matter? I understand that the DOJ Office of the Inspector General has concurrent jurisdiction of such complaints, but I thought perhaps the complaint might be in a backlog of some type or otherwise not come to your attention.

I apologize for the presumption of emailing you directly, but this matter is important to me and to others with whom I have discussed it.

Sincerely,

[REDACTED]

APPENDIX

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rendering final judgment.

(f) Bias or Prejudice - the existence of bias or prejudice against any class of citizens or any religious, racial or ethnic group, is of interest and concern to the FBI. Investigators should conduct appropriate investigation to obtain comments to resolve any issue and/or allegation of bias or prejudice that is received concerning an applicant.

(g) Financial Responsibility - each person interviewed who is knowledgeable of the applicant will be asked questions which will elicit information as to whether or not the applicant has a lifestyle or spending habits consistent with his or her means. The purpose of these questions is to determine if the applicant is financially responsible.

(h) Alcohol Abuse - each person interviewed who is knowledgeable of the applicant will be asked if the applicant is known to abuse alcohol. Obtain specific details regarding any such activity.

(i) Drug Abuse - each person interviewed who is knowledgeable of the applicant will be asked if the applicant is known to abuse prescription medications or to use illegal drugs or narcotics. Obtain specific details regarding any such activity.

EFFECTIVE: 01/31/94

67-7.7 Instructions for Investigative Personnel (See MIOG, Part II, 35-9.2.)

(1) Advise persons interviewed of exact position for which applicant is being considered.

(2) Do not convey impression that applicant being investigated is under suspicion or that investigation is of a criminal or subversive nature.

(3) Purpose of interviews is to get information, not to give information. Avoid possibility for accusation of character assassination or spreading of rumors.

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- (4) Investigation must be painstakingly exact, fair, unbiased.
- (5) Interviews must be thorough and exhaustive.
- (6) Request those interviewed to treat inquiries as confidential.
- (7) Investigating Agent should be persistent in his/her effort to pursue every lead to its logical conclusion.
- (8) Derogatory information should be fully developed and reported in detail. Ascertain facts on which derogatory conclusions predicated and follow through in questioning to obtain such facts. If derogatory information is developed, telephonically advise FBIHQ without delay. Advise all auxiliary offices by teletype (copy to FBIHQ) if so instructed by FBIHQ. Reports should show unbiased and complete inquiry. If some question exists regarding accuracy of derogatory information, identify original sources. Field offices discovering derogatory data must ensure that sufficient investigation is conducted to verify or disprove same. Promptly advise other offices which should be cognizant of derogatory information to facilitate their part of the investigation. All questions concerning information furnished under a promise of confidentiality will be resolved at FBIHQ in accordance with provisions of the Privacy Act of 1974 (Title 5, USC, Section 552a (e) (2)).
- (9) Do not protract investigation when derogatory information developed obviously disqualifies applicant for Bureau employment.
- (10) Bear in mind that copies of applicant reports may be disseminated upon request to any agency within executive branch of government, as well as under the provisions of FOIPA.
- (11) The results of derogatory information developed on support and Special Agent applicants should be reported to FBIHQ on an FD-302. The results of completed favorable background investigations on support and Special Agent applicants should be submitted to FBIHQ by summary airtel, teletype, or report.
- (12) Deleted
- (13) Deleted
- (14) Be aware of Privacy Act and confidentiality

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(b) If an account is found to be either currently in collection or currently over 120 days or more past due, the applicant must be interviewed concerning this account. The interview should obtain the applicant's comments as to whether he/she is aware that the debt(s) exists and if there have been any attempts made by the applicant to satisfy this obligation. This interview additionally affords the applicant the opportunity to clarify any underlying circumstances which are not apparent during a review of credit records regarding these delinquent accounts.

(14) File searches - Information obtained from file searches previously referred to should be utilized in connection with investigation and as lead material.

(15) Agency checks - FBIHQ personnel will conduct Office of Personnel Management (OPM) checks for all applicants and the National Crime Information Center record check for any applicant who is scheduled to enter on duty. A Defense Clearance and Investigations Index check will only be conducted on those applicants who are serving or have served in the military or employed by the military in a civilian capacity. WFO, in appropriate instances, must receive a lead to handle record checks, such as at the State Department, etc. If an

 It is not necessary to conduct a CIA check  A CIA check should also be conducted if the applicant has applied for a position with the CIA. (See (7) (a) of this section.)

b3
b7c
CIA

If an applicant has been or is currently employed with a federal government agency, a lead should be sent to the Washington Field Office to conduct an Inspector General check to determine if any records exist concerning internal complaints and/or grievances filed against the applicant.

(16) Reinterview of applicant

(a) Applicant may be reinterviewed for purpose of procuring additional information not previously furnished by him/her or to clarify information received during investigation. Under no circumstances should applicant be advised directly or by implication

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is given for inactive duty training; that is, scheduled weekly or monthly assemblies or drills. National Guard service is creditable only during periods when organization or a unit thereof is actually mustered into or activated in U.S. Army or Air Force. Report information obtained (including exact dates on active duty) concerning military duty in sufficient detail to permit Bureau to determine leave-earning or retirement.

(d) Report information concerning any physical disability disclosed in record, together with any facts indicating it was caused or aggravated by military service.

(e) It is required that the field office, designated by FBIHQ at the time background investigation is initiated, provide the following information from applicant's military file: original date of enlistment; date of entry into active duty and date of honorable release from same; highest rank attained; dates of reserve service; date of honorable discharge, if appropriate; status of remaining service obligation, if any; information about any foreign service; statement about any disciplinary action, including court martials and periods of AWOL; military occupation; list of awards received; ratings from most recent performance appraisals; any medical information indicating a possible disability, mental or physical, which could affect applicant's job performance; a list of all duty stations; and copies of conduct and efficiency reports.

(20) Alcohol or drug abuse - Every interviewee should be specifically questioned as to whether the applicant is a known alcohol abuser or is known to have made unauthorized use of drugs of abuse such as cocaine, heroin, LSD or marijuana. An affirmative response will require the development of specific details, including a determination as to whether the knowledge is direct or hearsay. Any positive information should, of course, be fully explored during the course of the investigation in order to completely resolve any allegations of alcohol or drug abuse on the part of the applicant.

EFFECTIVE: 04/07/97

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and accredited as above, with two years' work experience of a fairly continuous, full-time nature.

EFFECTIVE: 05/17/93

67-16.3.6 Deleted

EFFECTIVE: 02/25/91

67-17 PROCESSING APPLICANTS FOR THE SPECIAL AGENT POSITION

EFFECTIVE: 02/25/91

67-17.1 General Instructions

(1) No work is more important than properly interviewing, evaluating and investigating applicants for the Special Agent (SA) position with the FBI. Interviews and investigations must be exhaustive and designed to determine applicant's suitability for the position of Special Agent and develop any information bearing on his/her suitability for FBI employment.

(2) Instructions set out herein are not all-inclusive and personnel processing Bureau SA applicants should utilize every resource to ensure applicant's suitability for employment.

EFFECTIVE: 02/25/91

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67-17.2.2 Video Cassette Film "FBI Academy - New Agents' Training"

Prior to testing all SA applicants are required to view the Video Cassette Film, "FBI Academy - New Agents' Training." Should an applicant, upon viewing this film, express hesitation relative to his/her desire and ability to attain the SA position, he/she should be counseled to postpone testing until these uncertainties have been completely resolved. In addition, all applicants should be made aware of the fact that they must successfully pass all three phases of training, i.e., academic, physical, and firearms, before graduation from New Agents' Training. They should be orally advised of the requirements in each phase of training, and particular emphasis should be placed on the need for each applicant to be in good physical condition prior to entry on duty.

EFFECTIVE: 02/25/91

67-17.2.3 Selection System Briefing

During testing procedure all SA applicants must be given a briefing relative to our preemployment selection process. This briefing must include the fact that test grades are utilized to determine an applicant's eligibility for interview. After applicant has been interviewed, a combination of test and interview scores is utilized to rank applicants. The highly ranked individuals are then selected for further consideration based on the specialized needs of the FBI. Any necessary travel expenses incidental to the testing or interviewing must be borne by the applicant, unless such travel is ordered by FBIHQ, in which case FBI will bear cost. At no time should it be assumed that an appointment is forthcoming because the opportunity for testing and/or interviewing is offered. Prior to any appointment being made, applicants ranked highly as a result of test and interview scores are thoroughly investigated for the purpose of determining each applicant's suitability for employment as a Special Agent. Appointments are made on a competitive basis due to the limited number of vacancies occurring in this position.

EFFECTIVE: 02/25/91

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67-17.2.4 Tests Given to SA Applicants

(1) All applicants for the SA position are to be afforded the following:

(a) Special Agent Entrance Examination - An examination composed of two ability and three behavioral tests designed to predict Special Agent job performance. The test booklet is not to be written in. Answers are recorded on a marksense Agent Answer Sheet (FD-656) which is computer graded at FBIHQ. It is essential that the instructions on the answer sheet, particularly those pertaining to the coding of responses, be closely followed.

(b) Deleted

(c) Firearms Proficiency Indicator - These tests are designed to predict an applicant's potential for success in the firearms portion of new Agent's training and are to be administered to all SA applicants at the time the Special Agent Entrance Examination is given. The Principal Firearms Instructor should administer the test; in his/her absence an approved Firearms Instructor is authorized to administer the test. All weapons used in these tests must be carefully inspected by the firearms instructor before they are ever handed to an applicant, to ensure they are unloaded and in a safe condition. The results of these tests are to be furnished to the Special Agent and Support Applicant Unit, FBIHQ.

1. Service Revolver - Utilize one of the test weapons, Model 13, provided by Quantico specifically for this purpose. The applicant must take the test in the standing position with a one-hand grip and the arm locked straight out at shoulder level and parallel with the floor. The applicant will then pull the trigger, double action, as many times as possible in 30 seconds. The procedure will be repeated with the other hand and both scores recorded. Minimum passing score is 40 for both strong and weak hands. Any test score more than 60 days old is invalid and candidates must be retested, if necessary.

2. Service Rifle - Utilize an M16A1 (M), .223-caliber rifle without a recoil pad with a weight of 7 pounds 8 ounces. Place the weapon to the shoulder in firing position with the weak hand on the foregrip and the strong hand index finger on the trigger. Hold the weapon in this position for one minute. Record whether the applicant can accomplish this test.

3. Service Shotgun - Utilize a Remington Model

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made to interview employee's spouse, if married. A current application should be obtained and investigation conducted to update all items since employee's entry on duty, including up-to-date criminal checks on all listed relatives. | A current neighborhood check should be conducted to include any applicant who currently resides with a relative who is a Bureau employee. It is necessary to interview, conduct arrest and indices checks on CURRENT roommates. FORMER roommates who have resided with the applicant for the past five years should also be interviewed and indices checks conducted on them. Arrest checks should be conducted on former roommates ONLY if a date of birth is provided by the applicant. If the roommate resided with the applicant OVER five years ago, no investigation will be necessary. | The only checks not to be initiated are credit checks which will be handled by FBIHQ. References and social acquaintances should not be interviewed. | If appointed to the SA position, the support employee will, at the appropriate time, proceed to the FBI Academy at Quantico, Virginia, where he/she will be administered the oath of office.

(4) Support employees meeting the requirements for SA position will continue to be considered for possible appointment to this position upon separation from Bureau service, if they so desire. || (See MAOP, Part I, 17-2.1(4).) |

EFFECTIVE: 11/25/94

67-17.3.7 Computation of Grades

(1) Test Ranking Grade (TRG) - This is the grade that is achieved by an applicant in the testing portion of the Special Agent Selection System. It has a maximum of 45 points and is based on an applicant's performance in the Special Agent Entrance Examination.

(2) Interview Grade - An applicant may earn a maximum of 55 points in the interview.

(3) Percentile Ranking Grade (PRG) - This is an applicant's total score under the Selection System. It is composed of the TRG, to which is added the interview grade and veterans' preference points, where applicable. The PRG is utilized to rank each applicant in the program(s) under which he/she may qualify.