

[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] [DOB [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 [REDACTED]. 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 [REDACTED] 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 [REDACTED] 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]'s 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]'s 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 [REDACTED] 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 curbstome 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,

[Redacted Signature]

[Redacted Title]

cc: Applicant Coordinator

[Redacted Name]

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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
)
)
)

1 I, [REDACTED], declare as follows:

2 1. [REDACTED]

3 [REDACTED]

4 [REDACTED]

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 [REDACTED] a small amount of marijuana (less than \$100), and I intended to
11 visit with [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 [REDACTED] 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 [REDACTED] 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 she 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 Graham 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 [REDACTED] by my friend
6 [REDACTED] or contribute any money to the [REDACTED] 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 [REDACTED]
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 [REDACTED] 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 [redacted] 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]
[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 [REDACTED] income tax
16 [REDACTED] 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] he developed, 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 [REDACTED] **AND MEDICAL MARIJUANA**

9 36. As an attorney [REDACTED] 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. [REDACTED]
12 [REDACTED]
13 [REDACTED]

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 [REDACTED] only arise from an attorney-client
24 relationship, not personal life conduct, unless otherwise stated in the Rules of Professional
25 Conduct. For example, [REDACTED]
26 [REDACTED]

27 44. As an attorney [REDACTED] I have a general duty to “uphold” the law and not

1 commit felonies involving moral turpitude. [REDACTED] 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 [REDACTED]

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 [REDACTED] [REDACTED] My answers are included as well as the basis for moral
11 turpitude:

12 Q. [REDACTED]

13 A. [REDACTED]

14 Q. [REDACTED]

15 A. [REDACTED]

16 Q. [REDACTED]

17 A. [REDACTED]

18 Q. [REDACTED]

19 A. [REDACTED]

20 47. The Supreme Court of . . . [REDACTED] is
21 the only authority [REDACTED] that may impose professional discipline on an attorney. An
22 attorney license [REDACTED] 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 [REDACTED] is generally not enforced



1 in [REDACTED] [REDACTED] 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 [REDACTED]
4 [REDACTED]. In other words, it is punished less severely than [REDACTED]
5 [REDACTED]. 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 [REDACTED] [REDACTED] [REDACTED] 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 [REDACTED] [REDACTED] [REDACTED] is wrong, and it could
19 result in a claim for malpractice if [REDACTED] [REDACTED]

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 for which I am
22 [REDACTED]
23 My laughing was not a judgment of SA Coder, merely an observation on his question.

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

26 Date: 1/3/2010 [REDACTED]

Attachment 23. to SF-86: Illegal drugs

[REDACTED]

#1 In May 2008, while visiting [REDACTED] for [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 [REDACTED] a small amount of marijuana from [REDACTED] and to visit with [REDACTED]. [REDACTED] was not a drug dealer [REDACTED], but he did keep extra marijuana around and occasionally [REDACTED] friends and acquaintances. At some point (P-1) [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 [REDACTED] and I believe he and [REDACTED] directly agreed on the terms.

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

(86 Review) 5/18/2009.

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

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

Note! Applicant noted on his SF 86 13A, and attached a statement saying that he will be let laid-off 5/29/09 on amicable 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.
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5. Have you ever been involved in the purchase, manufacture, trafficking, production, transfer, shipping, distribution, receiving or sale of illegal drugs?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes – If so, provide details below as to what type, when, amount, where – public or private, how did you obtain the drugs, who else knows of the drug use, purchase, manufacture, trafficking, transfer, shipping, distribution, receiving or sale of illegal drugs?
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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:
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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:

please see SF-86 Attachments.

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

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

Yes No

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

Yes No

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

Details:

Applicant Initials _____

FEDERAL BUREAU OF INVESTIGATION
POLYGRAPH REPORT

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
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Examinee's Name (Last, First, Middle) [redacted]	Date of Birth (mm/dd/yyyy) [redacted]	SSN (xxx-xx-xxxx) [redacted]
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Case Title:
[redacted]
BUAP-SUPPORT
PRE-EMPLOYMENT POLYGRAPH EXAMINATION

Case Synopsis/Examiner's Conclusion:

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

(H)
[redacted]

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

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

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

Suitability Series I:

(H)
[redacted]

Examiner's Name SA [redacted] *RGL*

CONTINUE/DISCONTINUE
INITIALS: *[initials]* 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 [REDACTED] by his friend [REDACTED] from applicant's other friend [REDACTED]. Applicant denied contributing money or otherwise to [REDACTED]'S [REDACTED]. Applicant characterized his involvement as being merely along for the ride.

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

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

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

After discussing the May 2008 incident, applicant was asked

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

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

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

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

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

