

Senator Charles E. Grassley  
Senator Patrick J. Leahy  
United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

Dear Senators Grassley and Leahy:

I have received a copy of your September 24, 2003, letter to the Honorable John Ashcroft which sets forth the agreement under which the committee will interview Frank Perry, Patrick Kiemian, Bassem Youssef and myself. In hopes that I may assist you, I have prepared this letter setting forth matters which I find troubling. A matter of equal importance and most troubling for me, personally, is that despite any statements previously made by Director Robert S. Mueller, III and/or officials of the Department of Justice (DOJ) that there will be no retaliation, reprisals or hostile personnel action against those of us who would dare to bring to light serious misconduct in the Federal Bureau of Investigation (FBI), such actions have, in fact, impacted the lives of my family. I will explain further details in this letter, but you should know that the actions of former Assistant Director (AD) Robert J. Jordan and current Deputy Assistant Director (DAD) J. P. Weis, Office of Professional Responsibility (OPR), as they relate to my wife, Brenda M. Roberts, were so intolerable that she physically cannot return to work. As a result, the FBI and the Justice Management Division (JMD), DOJ, has chosen to place my wife in Leave-Without-Pay (LWOP) status, an action that reduced our family's income by one third and resulted in the loss of our home because we could not afford to pay the mortgage. I do not believe my wife will ever get over the loss of her home for what would appear to be my efforts to expose serious internal problems at the FBI.

On December 1, 2003, a Human Resource Assistant assigned to the Office of Professional Responsibility came to me and asked if I wanted to pack all of Mrs. Roberts' belongings located at her desk or if I wanted to pack them. I told her that I did not understand what she was asking. She looked horrified and said that she had received a call from the front office of OPR telling her that Mrs. Roberts' position had been posted and closed on Friday, November 28, 2003, and that she wanted Mrs. Roberts' belongings moved. The HRA later came back and said that it was ~~\_\_\_\_\_~~ DAD Weis' secretary that had requested this action. I told the Human Resource Assistant that I had no idea the position had been posted or that Mrs. Roberts' belongings were to be moved. I asked her, if she did not object, to take care of moving the belongings.

On July 12, 2001, when I appeared before the Senate Committee on the Judiciary I believed I was performing a valuable service to the United States and to the FBI because of what had occurred during and after the events of Ruby Ridge and the Potts Retirement Party. I have experienced an agonizing reality check by what has happened to my wife at the hands of former

the FBI, met Director Mueller in the stairwell on the eighth floor of FBI Headquarters and told Director Mueller of her love for the FBI and that all she ever wanted to be was a good secretary. Since that time we have been forced to sell our house because the FBI discontinued her salary and we could no longer afford to live in our home. It is my understanding that the JMD, DOJ would not authorize her continued salary. So after being forced to use all of her annual and sick leave, Brenda's salary was stopped. I find it interesting that the JMD, the component of the DOJ that I criticized in my testimony before the Committee on July 18, 2001, for their handling of the Ruby Ridge incident, is the component that decided my family's fate as to whether we would be able to live in or have to sell our home. I know that many will ask why our home had to be sold. The answer is simple. I, as well as Brenda, hold security clearances in the FBI. Financial solvency is a major factor in determining if one will hold a security clearance. When it was obvious that Brenda would stop receiving her salary, we knew we would not be able to afford the mortgage and could not afford to be delinquent in meeting any of our financial responsibilities. Therefore, there was no alternative but to sell our home.

I recall that in a letter to the Honorable John Ashcroft, Attorney General and Thomas Pickard, Deputy Director, FBI, Senator Grassley wrote that he has too often in the past seen whistleblowers subjected to retaliation. On July 18, 2001, when I appeared before the Senate Committee on the Judiciary, I believed I was performing my duty, not only as an FBI employee, but as a citizen of this country who was aware of serious misconduct which needed to be addressed. It was obvious to me that the DOJ and the FBI did not address these issues and the Committee was not even aware that there had been a final report on the Ruby Ridge incident. I can tell you that my wife and I have paid a high price for having come forward with that information and I am not so sure that others will want to subject themselves to the retaliation my wife and I have had to endure.

In my continuing effort to ensure misconduct matters are appropriately addressed, I believe the following may be of interest and directly relate to the standards utilized by the FBI initiating misconduct investigations:

1) On the morning of June 6, 2003, the day after SA Robert G. Wright, Jr. appeared on television, my wife witnessed AD Jordan and DAD Weis appearing happy and excited that SA Wright appeared on television. They discussed that this appearance on television will enable them to, in their words, "take him out". AD Jordan and DAD Weis had not yet seen the segment on SA Wright so they tasked [redacted] with obtaining a copy of the segment. AD Jordan then went to meet with [redacted] Office of the General Counsel. Upon AD Jordan's return to the OPR front office, AD Jordan told DAD Weis: "this isn't as good as it could be, but it will still work." My wife was appalled at what was happening in this matter and took contemporary notes of what was occurring in the SA Wright matter. She had been assigned to the front office of OPR since 1995 and had never witnessed such unprofessional conduct towards an FBI employee in her 9 years in OPR.

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... PROFESSIONAL Responsibility (OPR), FBI, to deliver to him a business card and a set of cufflinks provided by the United States Customs Service. Sitting in his office at that time was Supervisory Special Agent (SSA) [redacted] or the recently created Initial Processing Office (IPO), OPR.

I dropped off the business card and cufflinks and as I was leaving, DAD Weis called me back saying he wanted to discuss something with me. I was handed a three page document by SSA [redacted]. The first page was an original OPR Intake Routing Slip and the second and third pages were pages from an ABC News.com media story titled "Hiding in Plain Sight, College Instructor on Federal List of Suspected Terrorists." The OPR Intake Routing Slip was signed by DAD Weis and identified Insubordination as the allegation of misconduct with the subject of that misconduct being [redacted]

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... an element of that conversation I did not understand. I left this brief meeting with the clear understanding that I was to prepare the opening documents for this case and write the allegation in such a manner to deceive, misrepresent and hide from the OPR and the facts of this matter as known to the FBI on July 1, 2003.

I returned to my office and read closely the three page document given to me by SSA [redacted]. A close review clearly showed there was no predicate, based on this document, to even open a case. I called DAD Weis and told him there was no predication to open a case. He then told me the [redacted] do not appear for any media interviews without FBI authority. I informed him that based on the available information, at best, this violation was a Delegated Investigation and Adjudication (DIA) case, which meant the field division, in this case the Chicago Division, by policy, would investigate and adjudicate this matter. Further, according to OPR's Schedule Of Delegated Disciplinary Actions, warrants only a letter of censure. He told me there are more serious allegations in this matter.

I then went to SSA [redacted] office and told her the same information in an attempt to see if she had any leads, instructing SSA [redacted] not to appear for any media interviews. She handed me additional documents and I told her this, based on all available information, was a DIA case. [redacted]

During my time in my office, DAD Weis appeared in my office and sat down. He said in a questioning manner, that by OPR reporting to the OIG/DOJ that this matter was an insubordination violation was not inaccurate. I replied by saying again that an insubordination violation is a DIA case and only warrants a letter of censure. I went on to say that he and AD Jordan are planning on dismissing SA Wright from the FBI for an insubordination violation, something I have not witnessed in my time associated with OPR. I also asked him what ever happened to conducting an investigation on the allegation and interviewing the subject employee before we fire someone. Later DAD Weis that every time the FBI departs from established procedures and policy, we get our head handed to us. He did not change his mind and I knew this was going to be a hot item on Monday, June 9, 2003, because I had already been told that AD Jordan was going to place [redacted] I was scheduled for firearms at Quantico, Virginia, on June 9, 2003, so I prepared the necessary case opening forms after speaking to Acting Assistant Special Agent in Charge (A-ASAC) William Monroe, Chicago Division, and receiving copies, via facsimile, of three letters (March 6, 2003 letter to Mr. Robert G. Wright, Jr.; May 20, 2003 letter to Mr. Thomas J. Kneir and May 22, 2003 letter to Mr. [redacted]). These letters furnished adequate predication for the initiation of an investigation of SA Wright for insubordination.

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I was very concerned as to how OPR was proceeding with this investigation. My concern at that time was not for what level of discipline may be given to SA Wright, for if he was insubordinate I had no issue with discipline. My real concern was with the instructions given to me to develop, disseminate or disseminate information from the OPR. From that time on, it was necessary for that office to make an informed decision on how to proceed with an OPR internal investigation. I thought to myself that if this is happening in this case, in how many other cases are we doing the same:

When I left the office it was too late to contact ASAC Jeff Vasey, OIG/DOJ, and inform him of this matter. The next day, Saturday, June 7, 2003, I placed a call to ASAC Vasey's business telephone and left a voice mail message for him to call me at home.

On Monday, June 9, 2003, I contacted ASAC Vasey and told him what occurred on Friday regarding the alleged misconduct by SA Wright. I let him know there were more serious allegations that I did not know about, but his office would be informed of those additional allegations when I learned of them.

On Monday, June 9, 2003, I informed SSA [redacted] of the [redacted] for my unit, of those matters that I thought may become important while she was supervising the unit in my absence. I told her of the SA Wright matter, that it would be assigned to SSA [redacted] and that I thought it would be a hot topic for the day. She later called me and said the SA Wright matter was a hot topic, that she had met with the front office and said that OPR could conduct the investigation. She asked if she and SSA [redacted] should contact [redacted] I told her that it appeared to me that the Chicago Division was probably too close to the matter and that she and SSA [redacted] should go to Chicago and handle the matter so that there would not be

On June 11, 2003, I learned from SSA [redacted] that there may have been a conversation between A-ASAC Monroe and DAD Weis wherein there had been some discussion of permitting the United States Attorney (USA) and the Assistant United States Attorney (AUSA), two interviewees, to review a draft copy of the FD-302 used to secure their interview. I sent an e-mail to DAD Weis telling him that this is not done and asking him why we are making an exception for the USA and the AUSA. He replied saying he did not know what I was talking about, so I called him and told him what SSA [redacted] had learned during their interview of the USA and the AUSA. He said he saw no problem with permitting the USA and AUSA to review the draft of the FD-302. I told him we do not permit that and to make an exception would create a very bad precedent. He said to check with OPR/DOJ and see if they, during interviews, permit the interview to review drafts of interviews.

On June 11, 2003, I spoke to [redacted] OPR/DOJ, and explained the issue. She checked with some of her colleagues and called me back saying that other than sworn statements and interviews in which transcripts by court reporters are made, OPR/DOJ does not provide notes or drafts to interviewees for comment and change. She said that it was up to the FBI though, to decide in this matter. I spoke to DAD Weis again and he agreed that we should not provide the draft FD-302 to the USA and the AUSA for review.

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On June 12, 2003, I contacted SSAs [redacted] and [redacted] telling them that OPR will not furnish a draft of the FD-302 to the USA and AUSA. Later on June 12, 2003, I received a call from SSA [redacted] in which she told me the USA was not happy with OPR's decision in not providing the USA and AUSA with a draft of the FD-302. She further said the SA and A-ASAC for the Chicago Division were going to call DAD Weis, AD Jordan and the Director if necessary, in order to have a draft of the FD-302 given to the USA and AUSA. I immediately sent DAD Weis an e-mail advising him of this latest development. Shortly after sending my e-mail DAD Weis called and said he had changed his mind and that the USA and AUSA can review the FD-302. He referred to the USA as [redacted] and AUSA as another name, possibly by the AUSA's first name. I notified SSAs [redacted] and [redacted] and told SSA [redacted] that the draft would only be delivered personally to the AUSA and to keep all generations of the FD-302.

On June 17, 2003, ASAC John G. Raucei, Chicago Division, called for DAD Weis and spoke to Brenda M. Roberts, AD Jordan's secretary. DAD Weis was out, so ASAC Raucei left the a message with Mrs. Roberts. The message was left at 7:30 a.m. and the message from Mrs. Roberts is as follows:

[Large redacted block of text]

On June 17, 2003, [redacted] sent an e-mail to DAD Weis with the stated subject as [redacted]. The text of this e-mail reads:

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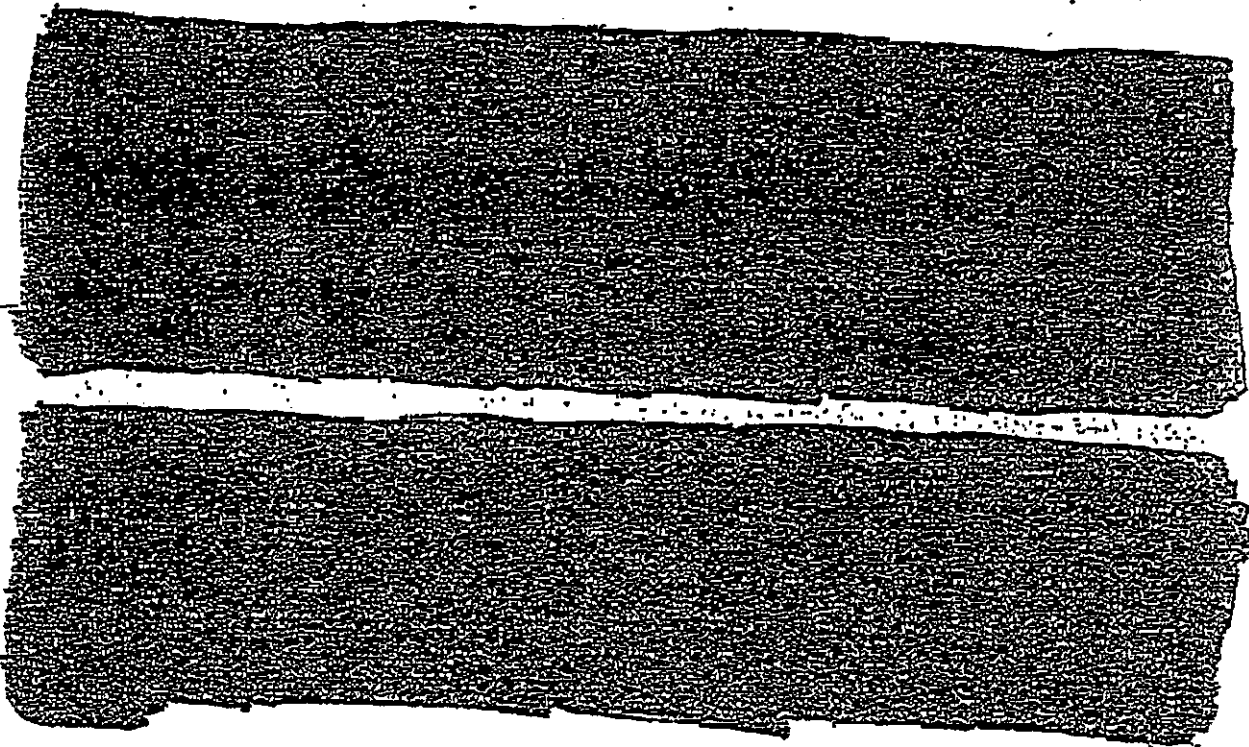
- 2) OPR Intake R/S Dated June 6, 2003
- 3) DAD Weis approval ( no date)
- 4) UC Roberts Rec'd June 6, 2003
- 5) Goes to Admin Unit for assignment - June 9, 2003
- 6) Assigned and opened to [redacted] - June 9, 2003  
Assigned DIO

No notation the the IG's Office has seen this..."

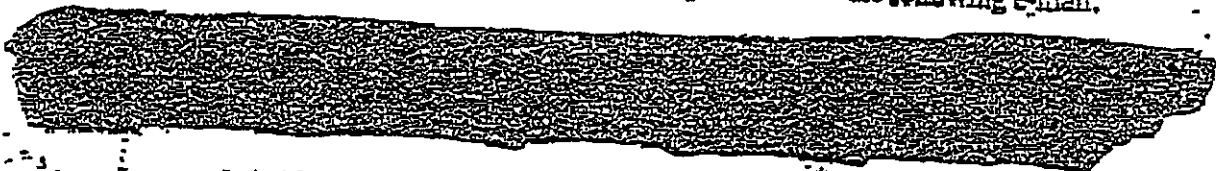
DAD Weis responds with his e-mail of June 17, 2003 saying "If we did the investigation; why is this a DIO? Check with John if that was his doing."

On June 17, 2003, at 3:06 p.m., the afternoon of the same day that Mrs. Roberts took the message from ASAC Raucci and delivered it to DAD Weis (7:30 a.m.) I responded to DAD Weis with the following:

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At 3:32 p.m. on June 17, 2003, DAD Weis responded with the following e-mail:



I responded, OK. I hope they can take what we developed and proceed."

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misconduct. That is, their actions constitute "the illegal or improper exercise of influence, coercive or otherwise, by an individual or group on an employee which could reasonably be expected to seriously affect or inhibit the employee in the impartial and effective performance of the employee's duty." Such an allegation of serious misconduct in the FBI, if denied by the subjects, has triggered the Substantial Objective Polygraph (SOB). The SOB polygraph is a compelled polygraph and if refused, the FBI may draw an adverse inference from the employee's refusal to submit to such a polygraph examination, provided that such refusal alone shall not be the sole basis for disciplinary action against the employee.

The following are the relevant documents and are attached hereto: Telephone message to DAD Weis from ASAC John Raucci, dated June 17, 2003, regarding the SA Robert G. Wright, Jr. matter;

~~OPR Intake Routing Slip with two page attachment, dated JTT June 6, 2003, regarding the SA Robert G. Wright, Jr. matter;~~

Cassandra M. Chandler, Assistant Director, letter to Mr. Robert G. Wright, Jr., dated March 6, 2003;

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Robert J. Garrity, Jr., Acting Assistant Director, to Mr. ~~\_\_\_\_\_~~ dated May 22, 2003;

~~\_\_\_\_\_~~ letter to Thomas J. Kneir, Special Agent in Charge, dated May 20, 2003;

E-mail from DAD J. Weis to ~~\_\_\_\_\_~~ dated June 17, 2003, regarding SA Robert G. Wright, Jr.;

John E. Roberts E-mail to J. Weis, dated June 17, 2003; and

Manual of Investigative Operations and Guidelines, Part II, 13-22.13.1.

In a recent Office of Inspector General, Department of Justice (OIG/DOJ) report, dated October 2003, titled An Investigation of Allegations Of Retaliation Against Brenda Roberts, regarding allegations of misconduct against AD Jordan and DAD Weis, the FBI according to that report, told the OIG/DOJ that the FBI was unable to locate the message taken and documented by Mrs. Roberts. Additionally, the OIG/DOJ report states that Mrs. Roberts deleted the message. Mrs. Roberts did not delete the message and a copy of that message is attached hereto. The FBI has the ability to locate that message and to report that it does not exist is false and misleading. I believe, after having the opportunity to review the October 2003 OIG/DOJ report regarding Mrs. Roberts, that the OIG/DOJ failed to consider much relevant information. For example, the OIG/DOJ does not mention the June 6, 2003 incident involving DAD Weis and me regarding SA Wright and the manner in which OPR was trying to deal with SA Wright. I called the OIG/DOJ on June 7, 2003 and personally provided this information OIG/DOJ on June 9, 2003.

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to consider the impact the interview of AD Jordan on June 23, 2003 had on Mrs. Roberts. This interview was actually conducted by personnel of the OIG/DOJ, and although we do not know the purpose of the interview, it may have been regarding the recent OIG/DOJ report concerning discipline in the FBI. Having read that report and noting certain discipline for former DAD [redacted] in which AD Jordan was involved, it would not be unreasonable to assume AD Jordan was unhappy. Since that OIG/DOJ report resulted from my reporting irregularities in the FBI's disciplinary program, and Mrs. Roberts is my wife, I do not think it is unreasonable to believe AD Jordan was angry at me and Mrs. Roberts. Frankly, if AD Jordan was going to "take out [redacted] he would not hesitate to take me out and my wife with me. The OIG/DOJ also did not consider the impact that the June 17, 2003 interview of AD Jordan by the Bell Commission. Upon AD Jordan's return to the OPR front office after that interview he was visibly unhappy. Then, on June 24, 2003, AD Jordan and DAD Weis told Mrs. Roberts that she was no longer allowed to open the mail and no longer allowed to log telephone calls. Had the OIG/DOJ conducted additional interviews in that investigation their office would have learned this information. What was at issue was a June 17, 2003 telephone message taken by Mrs. Roberts for DAD Weis concerning the [redacted] matter. That message as previously discussed read [redacted]

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[redacted] What I believe angered both AD Jordan and DAD Weis was Mrs. Roberts' copious note taking and the impact that could have on the FBI in general and the OPR specifically. That is, it documents the kind of egregious behavior in OPR.

2) This matter concerns a cheating scandal at the Federal Bureau of Investigation (FBI), Training Division and involves the National Academy students. The resulting misconduct by an FBI employee occurred when the Assistant Director, Training Division was derelict in his duties when he failed to take appropriate action regarding students cheating on a legal exam.

On September 3, 2003, I received an e-mail from SSA [redacted] which was also addressed to DAD Weis and SSA [redacted]. The subject matter was "Information Concerning Cheating Incident at the FBI Academy, National Academy Class [redacted]. The text is as follows:

[redacted] John, and [redacted]

This matter was brought to my attention the other day down here at the Academy. I made some discreet inquiries with knowledgeable personnel. Although I have no personal knowledge of the incident, I believe the below information accurately reflects what has occurred:

Two National Academy (NA) students were taking their mid-term legal exam several weeks ago given by SSA [redacted] Office of General Counsel. The exam was 25 multiple choice questions, which were computer graded. The exam was open book, but not open consultation. SSA [redacted] had to temporarily leave the room for approximately 15 minutes. During this time, two students were observed to be discussing a question and the appropriate answer. A fellow NA student reported this information. When the two student's exams were



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... get the question correct.

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This "talking" issue arose on the legal exam because another NA student had come forward by name, and reported these same two students "talking" about the test questions and answers on their Forensics exam. I have no knowledge of this Forensics incident, but it was allegedly even more blatant and included exam erasures and similar answers by these same two students.

The two students were confronted by Training Division (TD) NA Unit personnel regarding these improprieties during the legal exam. One student admitted discussing the question and answer (CHEATING), while the other did not admit anything. The student who admitted to the cheating pleaded not to be sent home as he would be fired from his job. He also offered to fail the course if need be, just so he would not be sent home.

The two students did not know each other before arriving here, but became very close friends while at the Academy. One is from Indiana and the other is from Minnesota.

Since all NA classes are accredited by the University of Virginia (UVA), [redacted] of UVA [redacted] was allegedly advised of this incident. I do not know what his recommendation was in reference to the cheating. However, UVA has a strict honor code against cheating. All NA students upon arrival at Quantico sign an FBI Academy Honor Code, which was drawn up by the NA Unit. These two students both signed the Honor Code.

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After conducting an investigation, it was clear to those involved that the two students had been cheating. [redacted] recommended to TD SAC Andy Bland that the two students either be sent home from the NA or they fail the class and not be allowed to walk across the stage to receive their graduation certificate with other graduates.

SAC Bland disregarded both these recommendations and chose to verbally admonish the two students for their "poor judgement." He was concerned that their careers would be over if they were thrown out of the NA and sent home. Additionally, it would be embarrassing for their departments. Both students will be graduating this Friday 9/5/03 and their grades from the legal exams will stand as previously recorded.

This decision by SAC Bland runs counter to everything we say and do here in the Ethics Unit, as well as counter to many of the other principles which the FBI stands for. This decision has started to make it out into the hallways and both the staff and other NA students are very upset. If we have a standard, we need to enforce it. The unfortunate result of cheating is you get fired sometimes. If these students are cheating here in this Academy setting, what are they doing out in the streets of their community? Maybe their departments really do need to consider whether they should still be police officers. To not advise these departments of this incident does a disservice to those communities.

I'm not sure if this decision by SAC Bland is dereliction of duty, mismanagement, or a performance issue. But it clearly goes against several of our Core Values, Institutional

reviewed at a higher level. Is this really the precedent we should be setting here at the FBI Academy, the premier law enforcement Academy in the world?

[Redacted]

[Redacted]

In response to DAD Weis, Acting Unit Chief [Redacted] responds to DAD Weis by sending an e-mail to SSA [Redacted] on September 4, 2003:

[Redacted]

[Redacted]

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SSA [Redacted] responds by e-mail, dated September 4, 2003.

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[Redacted]

[Redacted] Unit Chief [Redacted] responds by e-mail, dated September 4, 2003.

[Redacted]

It is my opinion that this was a dereliction of duty infraction on the part of SAC [Redacted] and OPR should open a case to resolve the allegation. This matter was not opened by OPR and I do not know what action, if any, resulted from this incident other than hearing the matter was sent to AD Grant Ashby, Criminal Investigative Division as a performance matter.

The following which provide further explanation of this event are attached hereto.

J. P. Weis E-mail, dated September 4, 2003;

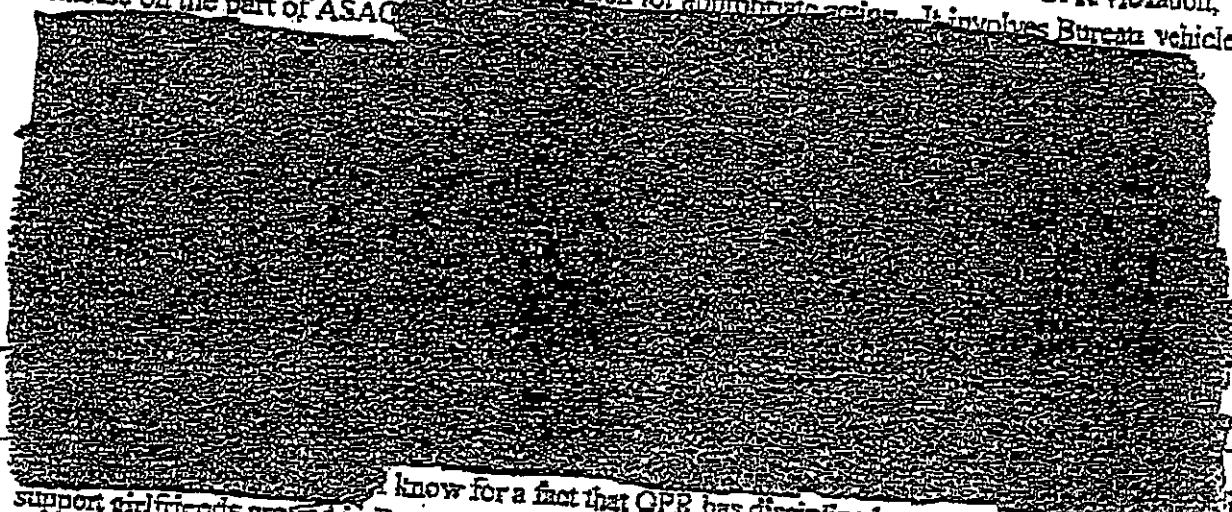
[Redacted] E-mail, dated September 4, 2003;

Standards Of Conduct For FBI National Academy Students

3) On or about June 27, 2003, I received an unsigned, one page letter from what appears to be an FBI employee. It has been my experience that letters reporting allegations of misconduct, particularly misconduct by a manager, are unsigned/anonymous because the person reporting the misconduct is fearful of retaliation for having reported misconduct. Based on my experience the fear of retaliation is strong and not unreasonable.

This letter reported the following:

"I would like to bring this to the attention of OPR. I'm not 100% sure that it's an OPR violation, but I believe it is and I bring it to your attention for appropriate action. It involves Bureau vehicle misuse on the part of ASAC [redacted]



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I know for a fact that OPR has disciplined agents for driving their support girlfriends around in Bureau vehicles. Is this a double standard that we do nothing when an ASAC drives his Unit Chief girlfriend around? This matter raises several questions [redacted]

The bottom line is fairness. If we discipline agents for this, then ASACs and Unit Chiefs should be held to the same standard. Unfortunately, I don't have much faith that anything will be done here, but I bring to your attention anyway in hopes that maybe someone will look into this to determine if this is misconduct on the part of [redacted]

Since any unilateral authority to open an OPR misconduct investigation has been taken from me, I referred this to [redacted] later saw the letter reporting this misconduct which had the following notations placed on the bottom of the letter:

"W 6/25"

"NO ACTION"

Both are Agents in the Bucar -

is generally a straightpath - minor deviation"

There is no indication that any investigation was initiated to determine the amount of deviation, if any. The suggestion that both are agents, to my knowledge, would not mitigate the alleged misuse of a government vehicle.

Attached hereto is a copy of the unsigned, one page letter.

Regarding the OIG/DOJ report titled A Review of Allegations of a Continuing Double Standard of Discipline at the FBI, dated November 2003, I have reviewed that report as well as the following:

On November 13, 2003, Director Robert S. Mueller, III made a press release and it is as follows:

For Immediate Release  
November 13, 2003  
View actual report (pdf)

Washington, D.C.  
FBI National Press Office

STATEMENT BY FBI DIRECTOR MUELLER REGARDING  
THE OFFICE OF INSPECTOR GENERAL'S REPORT,  
"A REVIEW OF ALLEGATIONS OF A  
CONTINUING DOUBLE STANDARD OF DISCIPLINE AT THE FBI"

WASHINGTON, D.C. - FBI Director Robert S. Mueller, III issued the following statement regarding the Office of the Inspector General's Report, "A Review of Allegations of a Continuing Double Standard of Discipline at the FBI":

"I appreciate the investigative efforts of the Office of the Inspector General (OIG) and I welcome their report. Last fall, I asked the OIG to conduct this review of allegations by an FBI employee (1) that disciplinary cases in the FBI's Office of Professional Responsibility have 'disappeared,' 'vaporized,' or 'been glossed over,' and (2) that the FBI systematically favors senior executives over less senior employees in its imposition of discipline. I requested this review because it is important for the public to have full confidence in the work and integrity of the men and women of the FBI. After reviewing the report, I am gratified that accusations of a double standard were not substantiated, and that the OIG found no examples of cases 'disappearing' or vaporizing."

"As part of our ongoing efforts to improve our discipline process, in May of this year, I commissioned a comprehensive review of the Bureau's Office of Professional Responsibility (OPR). To conduct this study, former Attorney General Griffin Bell and former FBI Associate Director Lee Colwell were selected.

"Judge Bell and Dr. Colwell are near completion of the fact-finding process for this study. They

...the matters involved in the  
 process. Additionally, many employees, both current and former, participated in interviews for this study and provided candid and useful information for the review. We anticipate receiving their report and recommendations in the coming weeks and are committed to ensuring that the disciplinary process within the FBI is fair, efficient and credible. I have stated before that employees must trust that allegations of wrongdoing will be thoroughly investigated and that discipline will be appropriate and fair, regardless of the assignment or seniority of the employee involved.

In addition, since July 2001, an Assistant Special Agent in Charge from the OIG has been detailed to the FBI's OPR and has been provided unfiltered access to all aspects of the FBI's disciplinary process. This detailee is in a position to identify - and refer to the OIG for investigation - any evidence that the OPR is applying a double standard.

"In the 95 year history of the FBI, 'Fidelity, Bravery, Integrity' has been the motto for FBI employees. Nothing better ensures this standard than the fair and equitable disciplinary process that applies to all employees across the board. We look forward to receiving the recommendations of Judge Bell and Dr. Colwell and working with the Office of the Inspector General, to improve the process of our Office of Professional Responsibility."

On November 18, 2003, Assistant Director (AD) Cassandra M. Chandler, Office of Public Affairs sent the following letter to the Washington Post:

November 18, 2003

Editor  
 The Washington Post  
 1150 15th Street, N.W.  
 Washington, D.C. 20071

Dear Editor:

I am concerned that the November 14, 2003 story, "Review Cites Sexual Misconduct at the FBI," fails to put the Department of Justice Inspector General's (IG's) conclusions into proper context and is therefore misleading to readers. The story implies that all of the cases studied by the IG for the report "reinforced earlier findings" that a double standard of discipline exists in the FBI.

In fact, most cases did not support this finding, and ultimately, the IG found "insufficient evidence to conclusively establish" the presence of a double standard. The very small number of cases that the IG found troublesome amounts to 0.2% of the cases handled by the FBI's Office of Professional Responsibility under the current system.

That being said, let me reiterate that we find any amount of wrongdoing by FBI employees or disparate treatment of employees to be unacceptable and adverse to the FBI's core values of

... OF JUDICIAL AND CONGRESS Working to improve the FBI's disciplinary process.

Sincerely,

Cassandra M. Chandler  
Assistant Director  
Office of Public Affairs

In a recent "Job Posting" for a GS-14, Special Agent for the Office of Public Affairs, that office published, in part, the following ... "THE OFFICE OF PUBLIC AFFAIRS IS SEEKING A SUPERVISORY SPECIAL AGENT WITH EXTENSIVE INVESTIGATIVE EXPERIENCE AND STRONG MARKETING SKILLS TO FILL A GS14 VACANCY IN ITS NEW PUBLIC AFFAIRS UNIT. THE SUCCESSFUL CANDIDATE WILL DRAW ON THOSE SKILLS AND KNOWLEDGE AS SHE/HE WORKS TO ENHANCE THE FBI'S PUBLIC REPUTATION AND IMAGE THROUGH PROACTIVE MEDIA RELATIONS AND STRATEGIC MARKETING. THE POSITIONS WILL WORK WITH NEWS OUTLETS, BOOK AUTHORS, THE ENTERTAINMENT MEDIA AND OTHERS TO ENCOURAGE THE DEVELOPMENT OF POSITIVE STORIES ABOUT THE FBI. THE SUCCESSFUL CANDIDATE WILL USE HER/HIS INVESTIGATIVE EXPERIENCE AND KNOWLEDGE OF THE BUREAU TO PITCH STORY IDEAS AND CONCEPTS TO THE NEWS TELEVISION, AND MOVIE INDUSTRIES..."

The following is a document, undated, from the FBI's Office of Public Affairs:

**"OIG REVIEW OF ALLEGATIONS OF A DOUBLE STANDARD OF DISCIPLINE AT THE FBI"**

**"Scope of the report"**

The Office of the Inspector General's (OIG's) November 2003 report entitled, "A Review of Allegations of a Continuing Double Standard of Discipline at the FBI," focused on issues raised by SSA John Roberts concerning an alleged continued double standard of discipline at the FBI. The report was requested by Director Mueller.

**"Favorable findings"**

The OIG concludes that its review did not find any examples of a case "disappearing" or "vaporizing," and finds there is "insufficient basis to conclude that the FBI systematically favors SES employees over less senior employees." The report also concludes that the "FBI appears to be taking seriously the concerns about a double standard of discipline."



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202 228 2131

TO:3124196688

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Based on the facts surrounding each investigation, we believe that levels of punishment handed down for specific misconduct was appropriate. The FBI does not condone the use of crude jokes and innuendo by its executive managers and did not condone it - the SAC was officially admonished for his behavior by the Deputy Director. A letter of censure was appropriate punishment for the SA because the comments were made before a mandatory employee training session, and were not only crude, but also racially insensitive.

- Finding 2: "[W]e found the FBI to be insufficiently sensitive to conflict-of-interest issues in promotion decisions."
- The OIG cites one specific matter in support of this finding, and we do not concur with its finding in that matter.
- The various policies and practices in place governing the promotional process, including the operation of the SAMMS Board, are sufficiently robust to provide a reasonable assurance that the system of promotions is fair.
- Outside observers from the Agents ranks were in attendance during the SAMMS Board meeting in question. Such observers are present during each Board meeting to view the proceedings and to validate the fairness of the process. We are not aware of any evidence that anyone participating or observing believed or suspected that the SAC's reaction to the candidates was influenced by his desire to reward a candidate for his conduct during the OPR investigation a year before.
- The SAMMS Board role in the selection of ASACs is one of providing recommendations and not of final selection. Final selection authority rests with the Director.

Finding 3: "[A] lack of uniformity in applying the "bright line" policy against lying, cheating, or stealing necessarily creates a suspicion that favoritism or cronyism is the reason that the "bright line" policy is not being followed."

- We believe the appropriate punishment was handed down in the matter of SSA1.
- Since 1977, the Inspection Division's Disciplinary Review Board has adjudicated 305 appeals and chosen to modify either the charges or sanctions in 59 of the matters (19%). The appeal process serves as a check and balance system within the disciplinary process, which significantly adds to its credibility.

Finding/Recommendation 4: The FBI should establish clear written procedures in order to ensure that it routinely and consistently seeks information about pending investigations from the OIG, as well as from internal FBI investigative components, for consideration in promotion decisions.

We agree with this recommendation and have already implemented these procedures.



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TD:3124196688

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in July 2003, the FBI began forwarding to the OIG the names of candidates being considered for promotion to the SES as well as all those being considered for ASAC and Legal Attache positions. The policy was further expanded in October 2993, to include the names of all Special Agents being considered for promotion to GS-14 and GS-15 supervisory positions.

Bottom line

Disparate treatment of FBI employees for any reason contradicts the FBI's core values of integrity, fairness, and accountability. Director Mueller holds all FBI employees to the highest standards of conduct, and will not tolerate double standards of discipline in the FBI."

After a careful review of the OIG/DOJ report, dated November 2003, the Director's press release, AD Chandler's letter to the editor and the undated and unsigned document from the FBI's Office of Public Affairs, I have to wonder if the authors of those documents read the same November 2003 OIG/DOJ report that I read. It is my belief that the OIG/DOJ's report is scathing and the conduct described in that report is not what the American people should expect from the highest ranks of the FBI. It appears to me that the FBI is in denial and is not concerned with accurately reporting the misconduct as stated in the OIG/DOJ report.

~~It is my belief that the OIG/DOJ's report is scathing and the conduct described in that report is not what the American people should expect from the highest ranks of the FBI. It appears to me that the FBI is in denial and is not concerned with accurately reporting the misconduct as stated in the OIG/DOJ report.~~

In February 2003, the OIG/DOJ released their report titled "A Preview of the FBI's Response to John Roberts' Statements on 60 Minutes." On page 10 of that report the OIG/DOJ states, in part, ... "Throughout the FBI, many managers expressed their opinions about the 60 Minutes broadcast and Roberts' statements. For example, in an e-mail to Jordan, FBI Deputy Director Gebhardt stated, 'I would not agree with you more.' Jordan's response to Gebhardt's e-mail stated 'I would not agree with you more.' There was the obvious direct shot at the Director (and myself) in the quote. I think the double standard of discipline will continue no matter who comes in, no matter who tries to change."

Enclosed with this letter is my letter, dated May 28, 2002 to Director Robert S. Mueller. In that letter I describe several incidents which I felt were problematic. Director Mueller, in a letter to me, advised he had referred my letter to the OIG/DOJ. I have no idea what action, if any, has been taken regarding all of the issues I raised. I mention this letter because in the above quote by Deputy Director Gebhardt, he seems to indicate his preference is to keep the FBI's problems from the world. I believe the FBI has done that for too long and if we continue on that course, there will be no reform in this organization. The matter involving SA Wright, which I previously mentioned, is an excellent example of D.A. Weis' attempt to keep information from the

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... Wright's employment without even interviewing him.

I am unable to locate any press release, speech or all employee e-mail from Deputy Director Gehhardt or any other record of him telling FBI employees that the following 28 FBI senior executives, through their egregious misconduct, brought discredit to the FBI Badge, and the 27,000 employees of the FBI, and/or disappointed him. In my humble opinion the following instances, some criminal, serve to discredit the entire law enforcement community, but because of their executive status, criticism by the Deputy Director of the FBI for that misconduct can be overlooked, and, as a previous OIG/DOJ Investigative Report, dated November 15, 2003 reported, they are promoted and rewarded with cash bonuses.

1. Former AD Joseph Wolfinger's conduct concerning the retirement party and sham training conference regarding former Deputy Director Larry A. Potts. Also, there were no comments made regarding reports that Wolfinger had a lucrative contract with the FBI, even though he was found to have been involved in serious misconduct just prior to his retirement.

2. Former Section Chief John O. Loudon's conduct concerning the retirement party and sham conference regarding former Deputy Director Larry A. Potts.

3. Former SAC Jack A. Daulton's conduct concerning his fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party.

4. Former SAC Robert E. Walsh's conduct regarding his fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party. Additionally, former SAC Walsh was the Inspector in Charge of the flawed Ruby Ridge investigation.

5. Former SAC James C. Prier's conduct regarding his fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party.

6. Former ADIC Van A. Harp's conduct regarding his fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party.

7. Former SAC Charles Mathews' conduct regarding his role in the flawed Ruby Ridge investigation and adjudication.

8. Former SAC Victor M. Gonzalez' conduct regarding his fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party.

9. Former SAC Herbert L. Collins, Jr. fraudulent voucher submission for expenses he incurred when traveling to former Deputy Director Larry A. Potts' retirement party and ...

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party's SAC and former Deputy Director Larry A. Potts.

11. Former Deputy Director Larry A. Potts' conduct regarding his role in the Ruby Ridge incident. Additionally, Potts sat on the Career Boards deciding promotions of Walsh, E. Michael Kahoe, Danny Coulson and Harp. His conduct was described as shocking in the Investigative Report of the OIG/DOJ.

12. Former SAC Danny Coulson's conduct regarding the Rules of Engagement in the Ruby Ridge incident.

13. ASAC Gale Richard Evans for his conduct in the destruction of the After Action Report for the Ruby Ridge incident.

14. Former AD Thomas Coyle's conduct during the adjudication of the Ruby Ridge incident and his conflict by sitting as a voting member on the Senior Executive Service (SES) Disciplinary Board deciding discipline in the Ruby Ridge incident.

15. Former Director Louis J. Freeh's conduct in the disciplining of employees in the Ruby Ridge incident.

16. Former Deputy Director Robert Bryan's conduct regarding the disciplining of SES employees in the Potts retirement party incident.

17. Current SAC John E. Lewis' conduct in changing the content of an FD-302 interview in the investigation of the Ruby Ridge incident.

18. Current SSA [REDACTED] conduct while at the Ruby Ridge crisis when he wrote what appeared to be instructions on an FD-302 for a Hostage Rescue Team Special Agent's (SA) statement regarding the shots fired at Ruby Ridge, not to differ from the FD-302 prepared by SA Lon Horvath, the shooter.

19. Former Inspector Deputy General Counsel Thomas Kelley's conduct regarding Ruby Ridge and WACO matters.

20. Current SAC Michael Wolf's conduct when participating in the adjudication of the Ruby Ridge incident with Mathews by permitting and contributing to a flawed adjudication. His failure to recognize a flawed investigation caused the use of significant DOJ and United States Postal Inspection Service resources to be used to accurately investigate and report the events of Ruby Ridge.

21. Current Special Assistant to the Director Jonathan L. Solomon's conduct when participating in the adjudication of the Ruby Ridge incident with Mathews by permitting and contributing to a flawed adjudication. His failure to recognize a flawed investigation caused the expenditure of significant DOJ and United States Postal Inspection Service resources to be used to

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22. Former SAC Robert M. Burnham's conduct when participating in the adjudication of the Ruby Ridge incident with Mathews by permitting and contributing to a flawed adjudication. His failure to recognize a flawed investigation caused the expenditure of significant DOJ and United States Postal Inspection Service resources to be used to accurately investigate and report the events of Ruby Ridge.

23. Former AD Michael A. DeFoe's conduct when he stated that he has a visceral dislike for Whistleblowers. Additionally, for his failure to recognize misconduct on the part of former Director Louis J. Freeh and refusing to note such misconduct in his correspondence with the DOJ/JMD.

24. Former SAC William G. Eubanks' conduct while SAC in the St Louis Division as described in the OIG/DOJ report, dated November 2003..

25. SAC Richard Swensen's by forcing my wife and me from the Boston Division for my involvement as an Inspector in Charge of the Ruby Ridge investigation. SAC Swensen's conduct was intolerable and I had to request that officials assigned to the Office of Professional Responsibility, Department of Justice intervene resulting in our transfer from the Boston Division.

26. SAC James H. Burrus' conduct when participating in the adjudication of the Ruby Ridge incident with Mathews by permitting and contributing to a flawed adjudication. His failure to recognize a flawed investigation caused the expenditure of significant DOJ and United States Postal Inspection Service resources to be used to accurately investigate and report the events of Ruby Ridge.

..... All the others who were assigned to the Ruby Ridge investigation and adjudication teams who were in a position to ensure that the investigation and adjudication were fair and without bias, but stood by and chose not to object to what resulted in incomplete and inaccurate investigations.

27. SAC R. Joe Clark's conduct as documented in the November 2003 OIG/DOJ Report.

28. SAC Andrew Bland failure to take decisive action regarding the cheating incident with National Academy students.

Additionally, I have not seen any comments regarding the FBI employees who were involved in the major Special Agent Test cheating scandal of the early 1980s. Where are those employees now?

It is difficult for my wife and me to understand how Deputy Director Gebhardt, with the apparent knowledge of Director Mueller, can say that my reporting of misconduct has made him so disappointed. Clearly, his e-mail gave AD Jordan the green-light for destroying my wife. I have discussed the above 28 serious misconduct matters committed by a former Director, two Deputy Directors, Assistant Directors, Deputy Assistant Directors, SACs, a Section Chief and SAs and apparently, by Deputy Director Gebhardt's silence on those matters, the fact that I made justice the

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As stated in the FBI's Memorandum To All Special Agents In Charge, dated March 5, 1997, "It is abundantly clear that the manner in which the FBI identifies, investigates and adjudicates allegations of serious misconduct on the part of FBI employees reflects directly upon our ability to perform our significant law enforcement and national security functions." My understanding of this statement is that what the FBI does regarding disciplinary matters and how we handle the adjudication of those matters directly impacts on the FBI's ability to conduct investigations in all investigative programs from Courterterrorism to White Collar Crime. A copy of that Memorandum is enclosed with this letter. I would not view a top to bottom review of the FBI's investigative programs by the United States Congress as unreasonable.

b2 I am requesting the FBI to provide copies of FD-302 interviews of Jeffrey Howard, former Principal Assistant Deputy Attorney General and Chief of Staff for the Deputy Attorney General, Department of Justice, dated September 22, 1995, and then Assistant United States Attorney, Robert S. Mueller, dated September 21, 1995, from FBI investigative file [REDACTED] for your review.

Sincerely,

John E. Roberts

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202 228 2131

TO:3124196688

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Start: Tue 8/17/2003 7:30 AM  
End: Tue 8/17/2003 7:30 AM  
Duration: 0 hours

b2  
b5  
b7A



DEC-15-2003 18:35 FROM:FINANCE CMTE

Date:

11/03 Sep 4, 2003 8:15 AM

Subject:

RE: Information Concerning Cheating Incident at the FBI Academy, National Academy

Class

Pat: Thanks for the information. [redacted] give me a recommendation on what action you think is appropriate.

Original Message

From:

Sent: Wednesday, September 03, 2003 8:28 PM

To: WEIS, J P [redacted] ROBERTS, JOHN E.

Subject: Information Concerning Cheating Incident at the FBI Academy, National Academy Class [redacted]

[redacted] John, and [redacted]

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This matter was brought to my attention the other day down here at the Academy. I made some discreet inquiries with knowledgeable personnel. Although I have no personal knowledge of the incident, I believe the below information accurately reflects what has occurred:

Two National Academy (NA) students were taking their mid-term legal exam several weeks ago given by SSA [redacted] Office of General Counsel. The exam was 25 multiple choice questions, which were computer graded. The exam was open book, but not open consultation. SSA [redacted] had to temporarily leave the room for approximately 15 minutes. During this time, two students were observed to be discussing a question and the appropriate answer. A fellow NA student reported this information. When the two student's exams and answer sheets were compared, there were erasures on the same question of both their exams and they then both got the question correct.

This "talking" issue arose on the legal exam because another NA student had come forward by name, and reported these same two students "talking" about the last questions and answers on their Forensics exam. I have no knowledge of this Forensics incident, but it was allegedly even more blatant and included exam erasures and similar answers by these same two students.

The two students were confronted by the Training Division (TD) NA Unit personnel regarding these improprieties during the legal exam. One student admitted discussing the question and answer (CHEATING), while the other did not admit anything. The student who admitted to the cheating pleaded not to be sent home as he would be fired from his job. He also offered to fail the course if need be, just so he would not be sent home.

The two students did not know each other before arriving here, but became very close friends while at the Academy. One is from [redacted] and the other is from [redacted].

Since all NA classes are accredited by the University of Virginia (UVA), [redacted] of UVA [redacted] was allegedly advised of this

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202 228 2131

TO:3124196688

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vicinity. However, UVA has a strict honor code against cheating. All NA students upon arrival at Quantico sign an FBI Academy Honor Code, which was drawn up by the NA Unit. These two students both signed the Honor Code.

After conducting an investigation, it was clear to those involved that the two students had been cheating. [redacted] recommended to ID, SAC [redacted] that the two students either be sent home from the NA or they fail the class and not be allowed to walk across the stage to receive their graduation certificate with the other graduates.

one  
sl

SAC [redacted] disregarded both these recommendations and chose instead to verbally admonish the two students for their "poor judgement." He was concerned that their careers would be over if they were thrown out of the NA and sent home. Additionally, it would be embarrassing for their departments. Both students will be graduating this Friday [redacted] and their grades from their legal exams will stand as previously recorded.

This decision by SAC [redacted] runs counter to everything we say and do here in the Ethics Unit, as well as counter to many of the other principles which the FBI stands for. This decision has started to make it out into the hallways and both the staff and other NA students are very upset. If we have a standard, we need to enforce it. The unfortunate result of cheating is you get fired sometimes. If these students are cheating here in this Academy setting, what are they doing out in the streets of their community? Maybe their departments really do need to consider whether they should still be police officers. To not advise these departments of this incident does a disservice to those communities.

I'm not sure if this decision by SAC [redacted] is a dereliction of duty, mismanagement, or a performance issue. But it is clearly goes against several of our Core Values: Institutional Integrity, Leadership, and Accountability to name a few. I believe this decision needs to be reviewed at a higher level. Is this really the precedent we should be setting here at the FBI Academy, the premier law enforcement Academy in the world?

[redacted]



DEC-15-2003 18:36 FROM:FINANCE CMTE

202 228 2131

TO:3124196688

P.30/61

To: [redacted]  
Date: Thu, Sep 4, 2003 5:40 PM  
Subject: Re: Information Concerning Cheating Incident at the FBI Academy, National Academy  
Class: [redacted]

[redacted]  
[redacted] Could you get me a copy of the FBI Academy Honor Code, which was drawn up by the NA Unit?? Thanks

>>> [redacted] 09/03 8:28 PM >>>  
[redacted] John, and [redacted]

This matter was brought to my attention the other day down here at the Academy. I made some discreet inquiries with knowledgeable personnel. Although I have no personal knowledge of the incident, I believe the below information accurately reflects what has occurred:

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Two National Academy (NA) students were taking their mid-term legal exam several weeks ago given by SSA [redacted] Office of General Counsel. The exam was 25 multiple choice questions, which were computer graded. The exam was open book, but not open consultation. SSA [redacted] had to temporarily leave the room for approximately 15 minutes. During this time, two students were observed to be discussing a question and the appropriate answer. A fellow NA student reported this information. When the two student's exams and answer sheets were compared, there were erasures on the same question of both their exams and they then both got the question correct.

This "talking" issue arose on the legal exam because another NA student had come forward by name, and reported these same two students "talking" about the test questions and answers on their Forensics exam. I have no knowledge of this Forensics incident, but it was allegedly even more blatant and included exam erasures and similar answers by these same two students.

The two students were confronted by the Training Division (TD) NA Unit personnel regarding these improprieties during the legal exam. One student admitted discussing the question and answer (CHEATING), while the other did not admit anything. The student who admitted to the cheating pleaded not to be sent home as he would be fired from his job. He also offered to fail the course if need be, just so he would not be sent home.

The two students did not know each other before arriving here, but became very close friends while at the Academy. One is from Indiana and the other is from Minnesota.

Since all NA classes are accredited by the University of Virginia (UVA), [redacted] of UVA [redacted] was allegedly advised of this incident. I do not know what his recommendation was in reference to the cheating. However, UVA has a strict honor code against cheating. All NA students upon arrival at Quantico sign an FBI Academy Honor Code, which was drawn up by the NA Unit. These two students both signed the Honor Code.

After conducting an investigation, it was clear to those involved that the two students had been cheating. [redacted] recommended to [redacted] that the two students either be sent home from the NA or they fail the class and not be allowed to walk across the stage to receive their graduation certificate with the other graduates.

SAC [redacted] disregarded both these recommendations and chose instead to verbally admonish the two students for their "poor judgement." He was concerned that their careers would be over if they were thrown out of the NA and sent home. Additionally, it would be embarrassing for their departments. Both students will be

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TO:3124196688

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... will stand as previously recorded.

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This decision by SAC [redacted] runs counter to everything we say and do here in the Ethics Unit, as well as counter to many of the other principles which the FBI stands for. This decision has started to make it out into the hallways and both the staff and other NA students are very upset. If we have a standard, we need to enforce it. The unfortunate result of cheating is you get fired sometimes. If these students are cheating here in this Academy setting, what are they doing out in the streets of their community? Maybe their departments really do need to consider whether they should still be police officers. To not advise those departments of this incident does a disservice to those communities.

I'm not sure if this decision by SAC [redacted] is dereliction of duty, mismanagement, or a performance issue. But it is clearly goes against several of our Core Values; Institutional Integrity, Leadership, and Accountability to name a few. I believe this decision needs to be reviewed at a higher level. Is this really the precedent we should be setting here at the FBI Academy, the premier law enforcement Academy in the world?

[redacted]

DEC-15-2003 18:36 FROM:FINANCE CMTE

202 228 2131

TO:3124196688

P.32/61

To: [redacted]  
Date: Thu, Sep 4, 2003 8:32 PM  
Subject: Re: Information Concerning Cheating Incident at the FBI Academy, National Academy  
Class: [redacted]

[redacted] It is 202-32-[redacted] Thanks [redacted]

>>> [redacted] 09/04 5:52 PM >>>

I have a blank copy of the "STANDARDS OF CONDUCT FOR FBI NATIONAL ACADEMY STUDENTS." I was told the two students in question each signed it upon their arrival at the Academy. What is your fax number where I can send it?

>>> [redacted] 09/04 5:40 PM >>>

Could you get me a copy of the FBI Academy Honor Code, which was drawn up by the NA Unit?? Thanks

>>> [redacted] 09/03 6:28 PM >>>

37C  
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[redacted] John, and [redacted]

This matter was brought to my attention the other day down here at the Academy. I made some discreet inquiries with knowledgeable personnel. Although I have no personal knowledge of the incident, I believe the below information accurately reflects what has occurred:

Two National Academy (NA) students were taking their mid-term legal-exam several weeks ago given by SSA [redacted] Office of General Counsel. The exam was 25 multiple choice questions, which were computer graded. The exam was open book, but not open consultation. SSA [redacted] had to temporarily leave the room for approximately 15 minutes. During this time, two students were observed to be discussing a question and the appropriate answer. A fellow NA student reported this information. When the two student's exams and answer sheets were compared, there were erasures on the same question of both their exams and they then both got the question correct.

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The two students did not know each other before arriving here, but became very close friends while at the Academy. One is from [redacted] and the other is from [redacted]

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students both signed the Honor Code.

After conducting an investigation, it was clear to those involved that the two students had been cheating. [redacted] recommended to TD SAC Andy Blain that the two students either be sent home from the NA or they fail the class and not be allowed to walk across the stage to receive their graduation certificate with the other graduates.

SAC [redacted] disregarded both these recommendations and chose instead to verbally admonish the two students for their "poor judgement." He was concerned that their careers would be over if they were thrown out of the NA and sent home. Additionally, it would be embarrassing for their departments. Both students will be graduating this Friday [redacted] and their grades from their legal exams will stand as previously recorded.

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[redacted]

Selection to attend the FBI National Academy provides an unparalleled opportunity to participate in the finest training available to law enforcement officers. In conjunction with the FBI's Core Values, which are publicly displayed in every classroom throughout the Academy, the FBI National Academy expects all NA students to conduct themselves in a manner which will credit themselves, their agency, and the FBI. In order to promote an environment conducive to learning, the following rules will be enforced:

1. In as much as the FBI Academy adheres to the University of Virginia code of honor for students, violations of this code, to include copying other student's papers, plagiarism, or taking credit for other person's work product, is a serious offense and can result in expulsion.
2. Attendance at all classes is required. The majority of officers attending the Academy are being paid by their departments, and the FBI and all departments expect that officers will attend classes. All expected absences must be submitted on the student's department letterhead for approval by the NA Unit staff, with notification to the instructor by the student. Absences resulting from emergencies must be followed up with a note to NA Unit staff on the student's department letterhead upon the student's return. Only illness, an emergency, or other reason authorized by the NA Unit staff can excuse a student from class.
3. No firearms are allowed in the Academy unless being taken directly to or from the gun vault. A firearm in the Academy under any other circumstance will result in expulsion.
4. Quiet hours in the dormitories begin at 11:00 P.M. on Sunday through Thursday, and 12:00 midnight on Friday and Saturday.
5. No alcoholic beverages are permitted in the dormitories. No alcoholic beverages may be consumed in the Grove or FBI Point after 11:00 P.M. on Sunday through Thursday, and 12:00 midnight on Friday and Saturday. Alcoholic beverages consumed on Academy grounds after the quiet hour is unauthorized. Alcoholic beverages on Academy premises other than the Boardroom, Grove and FBI Point, except at functions and locations authorized by the NA Unit, are prohibited.

National Academy students will be held accountable for their conduct. Any misconduct, especially alcohol related misconduct, will be critically assessed in order to determine the suitability of a person to remain a participant in the National Academy program.

The FBI Academy Honor Code reads: "As a student of the FBI Academy, I devote myself to the pursuit of truth and knowledge. I subscribe to the highest standards of honesty, integrity, fidelity, and honorable behavior. I will not condone the actions of those who would use dishonest means to attain these ethical goals." Any NA student violating this code is subject to dismissal from the Academy.

I understand these rules and expectations.

signature

date

FROM : JUDICIAL WATCH

... AND STRONG MAR  
 ... TO FILL A GS14 VACANCY IN ITS NEW PUBLIC AFFAIRS UN  
 IT. THE SUCCESSFUL CANDIDATE WILL DRAW ON THOSE SKILLS AND KNOWL  
 EDGE AS SHE/HE WORKS TO ENHANCE THE FBI'S PUBLIC REPUTATION AND I  
 MAGE THROUGH PROACTIVE MEDIA RELATIONS AND STRATEGIC MARKETING.  
 THE POSITIONS WILL WORK WITH NEWS OUTLETS, BOOK AUTHORS, THE ENTERTAINMENT  
 MEDIA AND OTHERS TO ENCOURAGE THE DEVELOPMENT OF POSITIVE STORIES ABOUT THE  
 FBI. THE SUCCESSFUL CANDIDATE WILL USE HER/HIS INVESTIGATIVE EXPERIENCE  
 AND KNOWLEDGE OF THE BUREAU TO PITCH STORY IDEAS AND CONCEPTS  
 TO THE NEWS TELEVISION, AND MOVIE INDUSTRIES. SHE/HE WILL ALSO  
 OVERSEE THE REACTION OF PUBLIC SERVICE ANNOUNCEMENTS, VIDEO NEWS  
 RELEASES, AND OTHER MASS MEDIA PRODUCTS THAT WILL ENHANCE PUBLIC  
 PERCEPTIONS OF THE FBI.

THIS POSITION REQUIRES A CREATIVE, ENERGETIC SELF-STARTER WHO IS COMMITTED  
 TO GETTING THE WORD OUT ABOUT THE FBI'S SUCCESSES AND ACCOMPLISHMENTS,  
 ITS WORLD-RENOWNED LAB, ITS COMMITMENT TO PROTECTING AMERICANS FROM TERRORI  
 SM, ITS ELITE TRAINING PROGRAMS, AND THE PROFESSIONALISM AND DEDICATION  
 OF ITS EMPLOYEES. THE SUCCESSFUL CANDIDATE WILL ALSO WORK WITH THE

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 F1 - NEXT TEXT SHIFT-F10 - FOIMS

THE PUBLIC AFFAIRS UNIT DIRECTLY COORDINATES NATIONAL AND INTERNATIONAL PROACTIVE MEDIA RELATIONS FOR THE FBI. ITS MISSION IS TO SIGNIFICANTLY RAISE THE FBI'S PUBLIC REPUTATION AND IMAGE AND ENHANCE THE TRUST AMERICANS HAVE IN THE FBI'S CAPABILITIES AND CHARACTER. IN THIS CAPACITY, THE PUBLIC AFFAIRS UNIT WORKS WITH MASS MEDIA OUTLETS TO COMMUNICATE INFORMATION ABOUT NATIONAL INVESTIGATIVE AND ADMINISTRATIVE ISSUES AND PRIORITIES TO THE GENERAL PUBLIC AND SPECIALITY AUDIENCES.

QUALIFICATIONS: (MINIMUM FOR ELIGIBILITY TO APPLY)

CANDIDATES MUST HAVE THREE YEARS FBI, INVESTIGATIVE EXPERIENCE, ONE YEAR RELIEF SUPERVISORY EXPERIENCE (MUST BE CURRENT EDSP PARTICIPANT), AND A CURRENT MEETS EXPECTATION PERFORMANCE APPRAISAL REPORT.

QUALIFICATIONS: (PREFERRED IN DESCENDING ORDER OF IMPORTANCE)

- 1) THOROUGHLY FAMILIAR WITH THE INVESTIGATIVE AND ADMINISTRATIVE GUIDELINES OF THE FBI;
- 2) AN OUTSTANDING PROFESSIONAL DEMEANOR;
- 3) ABILITY TO INTERFACE WITH HIGH LEVEL BUREAU OFFICIALS, OFFICIALS FROM OTHER GOVERNMENT AGENCIES AND CORRESPONDENTS, REPORTERS AND PRODUCERS.

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MISCELLANEOUS

MISCELLANEOUS:

SELECTEE IS REQUIRED TO SERVE A MINIMUM OF 52 WEEKS AT EACH PRECEDING GRADE (I.E., GS11, GS12, GS13) BEFORE CONSIDERATION FOR PROMOTION TO GS14. COST OF LIVING, INCLUDING HOUSING COSTS, IN THE WASHINGTON, D.C. AREA IS RELATIVELY HIGH.

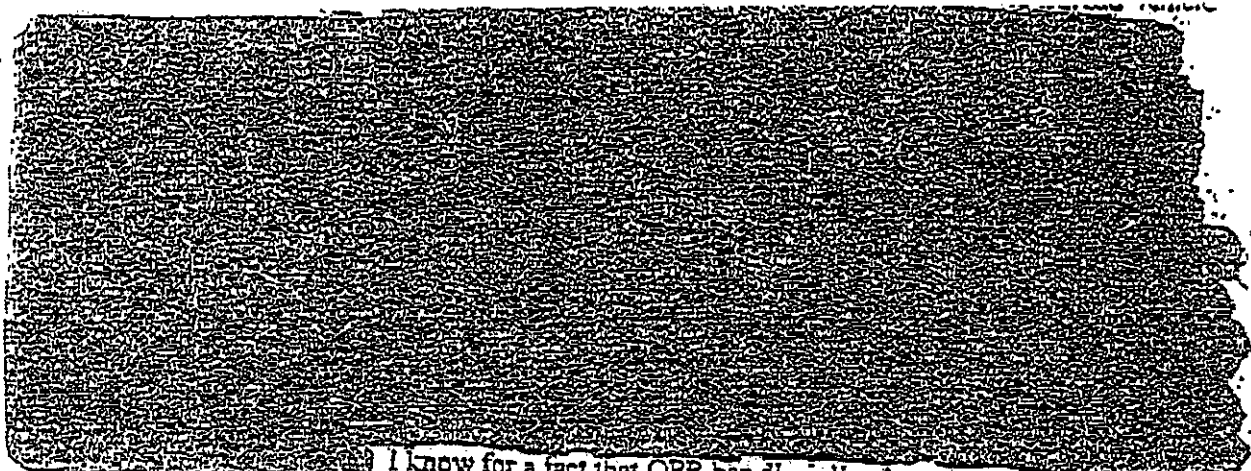
INSTRUCTIONS:

CANDIDATES SHOULD COMPLETE AN FD-638, REFERENCE THE JOB NUMBER SHOWN ABOVE, AND FORWARD ONE COPY TO THE SPECIAL AGENT MID-LEVEL SELECTION (SAMMS) BOARD, ROOM 10143, FBIHQ, AND ONE COPY TO HIS/HER DIVISION HEAD TO BE RECEIVED NO LATER THAN THE DEADLINE DATE SHOWN ABOVE. FD-638S RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED. DIVISION HEADS SHOULD ENSURE THAT COMMENTS ARE RECEIVED BY THE SAMMS BOARD NO LATER THAN TWO DAYS AFTER THE DEADLINE.

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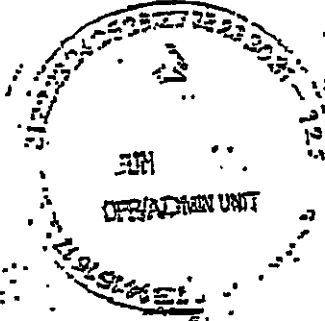
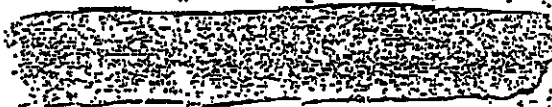




b7c  
b6

I know for a fact that OPR has disciplined agents for driving their support girlfriends around in Bureau vehicles. Is this a double standard that we do nothing when an ASAC drives his Unit Chief girlfriend around? This matter raises several questions:

The bottom line is fairness. If we discipline agents for this, then ASACs and Unit Chiefs should be held to the same standard. Unfortunately, I don't have much faith that anything will be done here, but I bring to your attention anyway in the hopes that maybe someone will look into this to determine if this is misconduct on the part of



11/6/25  
No Action  
B...  
T...

[Redacted] SES

OPR  
SEARCHED  
SERIALIZED  
INDEXED  
FILED  
DEC 23 2003  
FBI - WASHINGTON

Re: RE: SA Robert G. Wright, Jr. Matter

OK. I hope they can take what we developed and proceed.

>>> Wels, J P 06/17 3:32 PM >>>

[Redacted]

Original Message

From: ROBERTS, JOHN E

Sent: Tuesday, June 17, 2003 3:06 PM

To: Wels, J P

Subject: SA Robert G. Wright, Jr. Matter

b7c

[Redacted]

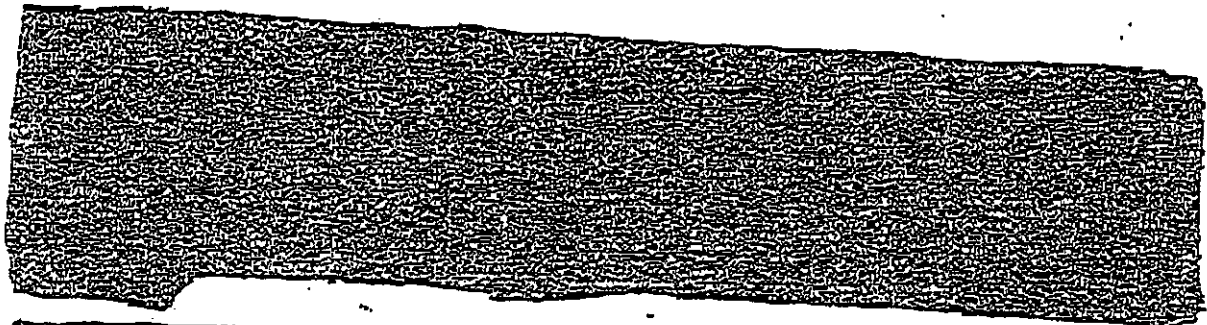
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b7A

[Redacted]

From:  
To:  
Subject:

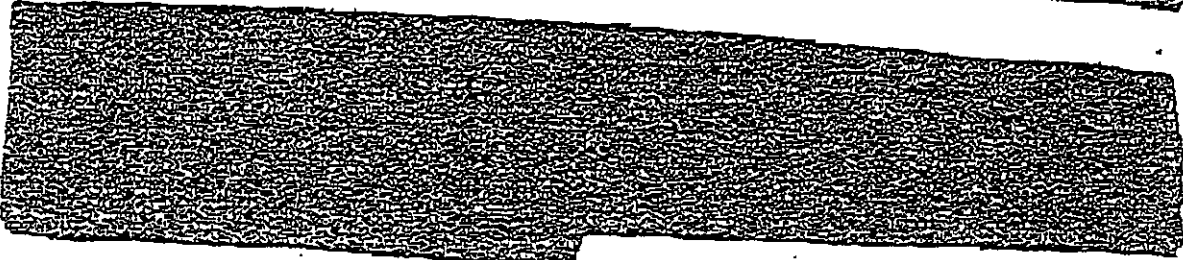
JOHN E. ROBERTS  
J Weis  
SA Robert G. Wright, Jr. Matter



b7c

b5

b7A



Date:

Tue, Jun 17, 2003 1:42 PM

Subject:

RE: Case Flow - Robert Wright Case

If we did the investigation; why is this a DIO? Check with John if that was his doing.

~~Original Message~~

From:

Sent: Tuesday, June 17, 2003 1:07 PM

To: Weis, J P

Subject: Case Flow - Robert Wright Case

b7c

- 1) ABC News internet site: June 5, 2003
- 2) OPR Intake F/S Dated June 6, 2003
- 3) DAD Weis approval (no date)
- 4) UC Roberts Rec'd June 6, 2003
- 5) Goes to Admin Unit for assignment - June 9, 2003
- 6) Assigned and opened to [redacted] June 9, 2003  
Assigned as a DIO

No notation that the IG's Office has seen this...

DATE: 06/06/2003

ROUTE TO:

DEPUTY ASSISTANT DIRECTOR  
 UNIT CHIEF ROBERTS *6/6/03*  
 [REDACTED]  
 [REDACTED]  
 [REDACTED] / BRENDA  
 CASE SUPERVISOR

*b7c*

ALLEGATION(S): 19D Insubordination

SUBJECT(S)/COMPLAINANT(S): SA Robert G. Wright, Jr.  
 CHIEF OF POLICE  
 DELEGATED INVESTIGATION ONLY  
 OPP # 4404

RECOMMENDATION:  "O" MATTER  
 FULL INVESTIGATION

DEPUTY ASSISTANT DIRECTOR APPROVAL:

*[Signature]*  
*Date?*

Sharon E. Slattery

*6/6/03*

*Advised by DAD J.P. Lewis that SA Robert G. Wright, Jr. was advised via letter dated 6/24/03*



*D.P.*

DATE: 06/06/2003

ROUTE TO:

DEPUTY ASSISTANT DIRECTOR  
 UNIT CHIEF ROBERTS *6/6/03*  
 [REDACTED]  
 BRENDA  
 CASE SUPERVISOR

b7c

ALLEGATION(S): 19D Insubordination

SUBJECT(S)/COMPLAINANT(S): SA Robert G. Wright, Jr.  
 CHICAGO DIVISION  
 DELEGATED INVESTIGATION ONLY  
 OPR # 4024

RECOMMENDATION:  "O" MATTER  
 FULL INVESTIGATION

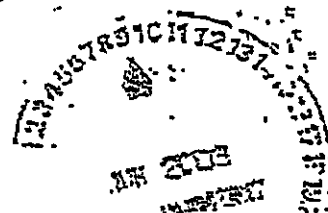
DEPUTY ASSISTANT DIRECTOR APPROVAL:

*[Signature]*  
 Date:

Sharon E. Slattery

6/6/03

Advised by DAD J.P. Weiss that SA Robert G. Wright, Jr.  
 was advised via letter dated 6/24/03



*[Handwritten initials]*

Precedence: ROUTINE

Date: 05/07/2002

To: Office of Professional Responsibility

From: Office of Professional Responsibility  
Internal Investigative Unit II, Room 11851  
Contact: Unit Chief John E. Roberts, Extension 9508

Approved By: Roberts John E

Drafted By: Roberts John E

Case ID #: 263-HQ-0 (Pending)  
[Redacted] (Closed)  
[Redacted] (Closed)

Title: SSA [Redacted]  
INFORMATION CONCERNING

Synopsis: To document a 05/07/2002 conversation between Unit Chief (UC) John E. Roberts, Internal Investigative Unit II, Office of Professional Responsibility, and [Redacted] Employment Law Unit I, Office of the General Counsel (OGC), regarding captioned matter.

36  
7c

Details: On 05/07/2002, UC Roberts met with [Redacted] and the following was discussed: UC Roberts was responsible for opening an internal investigation based upon allegations that SSA [Redacted] while assigned to the [Redacted] Division, made inappropriate comments to a female employee of the [Redacted] Division. At a later time, UC Roberts was interviewed during the course of an EEO investigation based on an EEO allegation made by SSA [Redacted]

Recently, UC Roberts has learned of information that may indicate that SSA [Redacted] may have been treated differently than a mid-level manager who was involved in the inappropriate touching of female subordinate(s). This information was made known to [Redacted] who opined that the recent information may have no impact on litigation involving SSA [Redacted]. However, [Redacted] will make the information known to the OGC attorney handling the SSA [Redacted] litigation.

Washington, D.C. 20535

March 5, 1997

## MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: STANDARDS OF CONDUCT  
DISCIPLINARY MATTERS - REVISION OF  
THE FBI'S DISCIPLINARY PROCESS

As the Director of the Federal Bureau of Investigation, one of my most important duties is to emphasize to each employee the commitment that each one of us must make to maintain the highest standards of integrity and ethical conduct. I have the personal responsibility to take those actions which are necessary to establish and enforce standards of ethical conduct through personnel policy and practice, especially as it relates to the investigative activities of the Office of Professional Responsibility (OPR), Inspection Division (INSD), and the adjudicative functions of the Personnel Division (PD) in performance, conduct and fitness for duty determinations. In January, 1994, I promulgated regulations emphasizing the importance of integrity and candor on the part of every FBI employee, i.e., the "bright line", and more recently I have taken steps to improve ethics training for all FBI personnel.

Based on an analysis of the policy and practices of both the OPR and the PD, I also decentralized some of the disciplinary process. My analysis had determined that both OPR and the PD were effectively performing their assigned duties. However, I also determined that in certain instances, significant delays had been experienced in the timely resolution of allegations of serious misconduct on the part of FBI employees. As a result of this determination, I took steps to revise disciplinary program policy to delegate greater responsibility and authority to field and FBIHQ Division Managers. This



As a result of these actions and other streamlining efforts, the turnaround time associated with the resolution of misconduct allegations has improved greatly since September, 1993.

In keeping with my practice of seeking continual improvement in the administrative and operational processes of the Bureau, I have continued to monitor and evaluate the functioning of our disciplinary process. I have concluded that further improvement in our disciplinary program, policy and practice is warranted.

#### STRUCTURAL REORGANIZATION OF THE DISCIPLINARY PROCESS

It is abundantly clear that the manner in which the FBI identifies, investigates and adjudicates allegations of serious misconduct on the part of FBI employees reflects directly upon our ability to perform our significant law enforcement and national security functions. Given the significance which should be placed upon the FBI's disciplinary process, I have decided to task the Deputy Director with personal responsibility for executive oversight of all aspects of the disciplinary process. Heretofore, the process has been bifurcated. The investigative responsibility for these matters was placed in the INSD's OPR and the adjudicative responsibility was placed in the Administrative Summary Unit (ASU), PD. To enable the Deputy Director to exercise close oversight of the entire disciplinary process, I am realigning those portions of INSD and PD which perform disciplinary functions into the same component, which will be called the Office of Professional Responsibility. This new entity, OPR, will be realigned within the FBI's organizational structure as a component of the Deputy Director's office.

OPR will be directly managed by an Assistant Director (AD) and a Deputy Assistant Director (DAD). The AD, OPR, will report to the Deputy Director on disciplinary matters, and jointly to the Director and Deputy Director on policy matters. Placing responsibility for the investigative, adjudicative and administrative functions of the disciplinary process within a single entity directly responsible to the Deputy Director will result in a disciplinary process which is more independent and efficient. Likewise, placing responsibility for all aspects of the disciplinary process in one entity will make it more accountable.

OPR will be comprised of the currently existing INSD/OPR (renamed Internal Investigative Units, I and II) and the PD/ASU (renamed the Adjudication Unit), as well as an Administrative Unit supporting the entire new office. The funded staffing level (FSL) of the new office will be augmented by both

12-23-03  
ADMINISTRATION 6-07

... counsel will be also augmented to facilitate the timely review of OPR files relied upon to support a suspension for more than fourteen days, demotion or dismissal.

The authority to decide disciplinary action currently exercised by officials of the PD will be transferred to the newly constituted OPR. This change in the organizational structure of the disciplinary process will not alter the delegation of authority to Division/Office Heads in routine disciplinary actions which do not involve a suspension from duty without pay for more than fourteen days, demotion or dismissal, or the adjudication of certain serious misconduct offenses. Officials within the newly constituted OPR will exercise authority similar to that which has previously been exercised by their respective counterparts in the management structure of the PD.

The Unit Chief of OPR's Adjudication Unit will have the authority to take disciplinary actions, including issuing letters of censure and suspending employees from duty without pay for fourteen days or less, except in sensitive matters or those involving employees serving in Grade GS 15 or above. A sensitive matter is one which involves a matter of substantial, actual or potential notoriety, or one which can have a significant impact upon FBI policy or programs. In addition, the Unit Chief of the Adjudication Unit will be responsible for proposing suspensions of more than 14 days, demotion or dismissal in all disciplinary matters, except those involving employees serving in Grade GS 15 or in the FBI's Senior Executive Service, or those which involve sensitive matters.

The DAD, OPR, will be responsible for deciding disciplinary actions proposed by the Unit Chief of OPR's Adjudication Unit; will be charged with proposing suspensions of more than 14 days, demotion or dismissal of employees serving in Grade GS 15; and will be responsible for recommending or deciding disciplinary action in sensitive matters.

The AD of OPR will manage the overall investigative, adjudicative, training and administrative function of the Office and will have the responsibility to decide disciplinary actions proposed by the DAD, OPR, or which are sensitive in nature.

Disciplinary procedures in the FBI's Senior Executive Service (SES) policy will conform as closely as feasible to these procedures.

7-1-03 11:11 AM

MISCONDUCT CONDUCTED UNDER THE DIRECTION OF OPR

**A. CURRENT POLICY**

At present, employees have the right to full representation by an attorney during the course of criminal inquiries. Although an employee may retain an attorney in an administrative (i.e., noncriminal) inquiry, the employee may not have that attorney accompany and advise him/her during an interview conducted in an administrative inquiry.

**B. NEW POLICY**

An employee who is the subject of an administrative inquiry involving serious misconduct, which is conducted under the auspices of OPR, will have the opportunity to have an attorney present with him/her during the conduct of an interview in the course of that inquiry, and to have an attorney represent him/her in the subsequent adjudicative process, with the limited exceptions described below.

**C. RATIONALE AND DETAILS OF THE NEW POLICY**

I am effecting this change in our disciplinary program policy because employees who are the subjects of potentially adverse personnel actions may benefit from sound, objective and informed legal advice. In fact, they often need someone to advise them candidly and dispassionately about their situation, their potential liability and the options available to them. The presence of an attorney, rather than a friend or associate, is being permitted because what an employee needs in these circumstances is someone who has some stake in the integrity of legal processes, who has ethical constraints regarding the dissemination of information learned from sensitive discussions, and who understands and can tell the employee that lying or shading answers is not in his/her interest. Such counsel should improve our current OPR process by helping to ensure that an employee provides factually correct and complete answers to all

Employees are reminded that they must be cognizant that all information they provide to an attorney is subject to the same restrictions which limit disclosure of any information which has been secured by them in their official capacity. They are not authorized to disclose any FBI information or documentation without prior Bureau authority. This prohibition extends to verbal disclosure of information acquired as a result of FBI employment, as well as the disclosure of documentary information.

... OF THE NEW POLICY

The determination that an administrative inquiry involves an allegation of serious misconduct will be made by OPR. An employee's request for an attorney to be present at his/her administrative inquiry will be granted unless compelling reasons to the contrary exist.<sup>2</sup>

The Chief Division Counsel, an Assistant Division Counsel, or any employee employed in a legal capacity by the government will not be permitted to serve as an attorney for any employee in disciplinary matters. In addition, the attorney selected by the employee will not be permitted to be associated in any way with the subject matter of the investigation.

This opportunity to consult with an attorney does not mean that an employee can come to an administrative interview with a friend, relative or interested fellow employee; rather, the employee can seek the assistance of a private attorney licensed to practice and authorized to represent the employee. Since this opportunity to consult with an attorney will be granted at the discretion of the FBI, employees should not interpret this policy to mean that they have an absolute right to such counsel in dealing with the administrative processes of the Bureau. Employees should also realize that a failure to exercise the option to consult with an attorney or to have such counsel present during an OPR interview will not prohibit or preclude the Bureau from taking disciplinary action. The policy should be recognized as one of the means used by the Bureau to ensure that every employee is fully informed of procedural entitlements during the disciplinary process and understands the significance of his/her personal responsibility to be fully cooperative and candid during administrative inquiries.

As previously indicated, the opportunity being afforded to an employee for representation by an attorney in this

<sup>2</sup> If a request must be denied, that decision will be made by the AD or DAD, OPR, in consultation with the General Counsel or a designated Deputy General Counsel. The opportunity to have an attorney present during an interview in an OPR administrative (non-criminal) inquiry, or at stages of the adjudicative process, generally will not be extended in investigations involving classified or sensitive information or techniques, where, in the view of the FBI, disclosure of such information or techniques to a party outside the FBI would compromise criminal investigations, prosecutions or national security interests.

MEMORANDUM

... himself into the interview process in an OPR administrative (non-criminal) investigation in any way. It is the prerogative of the OPR investigator to determine what questions should be asked and to decide whether an employee's answer has been responsive. This will not preclude an employee from seeking the guidance of his/her attorney during interview. The opportunity to have an attorney present in no way alters an employee's obligation to submit to an OPR administrative (non-criminal) interview when directed to do so, to be fully cooperative with the investigative and adjudicative process, and to be candid and forthright.

Inasmuch as there is no legal or constitutional right to representation by an attorney in administrative matters, the decision to retain an attorney will be entirely up to an employee and the opportunity being afforded, as described, will in no way obligate the FBI to provide or to pay for legal representation or the cost of an attorney. Although the opportunity to have an attorney present during an OPR administrative (non-criminal) interview will be afforded, and reasonable accommodation will be made to allow this to occur, the fact remains that an employee's participation in an OPR interview is compulsory and an OPR investigator will have complete authority to set the time and place for such interviews. All communications will continue to be between OPR and the employee; no OPR investigator will have any obligation to communicate with an employee through an attorney during the investigative process in a non-criminal OPR inquiry. Failure to comply with OPR directives in this regard could be considered insubordination and, therefore, could result in an employee's dismissal for failure to obey a lawful order.

NOTIFICATION TO EMPLOYEES WHO BECOME SUBJECTS OF AN OPR INVESTIGATION

A. CURRENT POLICY

It is our current policy for OPR to provide written notification to FBI employees who become subjects of OPR administrative (non-criminal) investigations at their outset. This notification informs the employee of the allegations upon which the investigation is predicated. When a case is closed administratively without formal adjudication, the employee is notified as well. Additionally, under current procedures, when an investigation is completed in a matter which is to be adjudicated by the PD, the employee is so notified.

In OPR criminal investigations, wherein notification to the subject employee could adversely impact the investigation, written notification is, of course, withheld until such notification is appropriate.

may not be notified of the changes.

B. NEW POLICY

In the future, OPR will provide written notification to employees not only at the earliest feasible time in an inquiry, but also when a significant change in, or expansion of, the allegations predicated the inquiry occurs. This notification will include the allegation(s) of misconduct being addressed. Whenever investigative requirements are not adversely affected, OPR will attempt to ensure that this notification occurs prior to the subject employee's interview. However, especially when OPR investigators are conducting on-site investigations, pre-interview notification may sometimes be impractical. Separate notification of investigation into possible false statements or a lack of candor/cooperation during the inquiry will not normally be made, as all employees should realize it is necessary to verify the accuracy and completeness of information furnished.

EXPANSION OF PROCEDURAL PROTECTIONS IN PERSONNEL ACTIONS

Any employee who is subject to a proposed sanction of suspension without pay for more than fourteen calendar days, demotion or dismissal, arising from the disciplinary process will be afforded the following procedural protections:

- (1) thirty calendar days' advance written notice of the proposed adverse action;
- (2) the opportunity to contact and use an attorney to assist in the disciplinary matter, subject to limitations imposed by law and regulation, which will be explained in writing to the subjects of OPR inquiries, on their disclosure of information received through their FBI employment to an attorney;
- (3) an opportunity to review, upon written request made within ten calendar days of the above notice, the

Personnel serving in the FBI's Senior Executive Service are governed by separate policy which conveys similar procedural protections.

The FBI will not be responsible for payment of any attorney's fee or other expenses incurred by an employee in connection with an attorney's representation of an employee's interests associated with a disciplinary matter or an appeal of a disciplinary sanction.

be imposed;<sup>5</sup>

(4) an opportunity for the employee and his/her attorney to provide a written response to the proposed action, to include affidavits or other documents of choice, and to identify any witnesses or documentary sources of exculpatory evidence which could not have previously been brought to the attention of OPR, within ten calendar days following receipt of the proposed action or of being provided access to the material described in (J) above, whichever occurs later;

(5) fifteen days notice of a hearing in which the employee and his/her attorney may make an oral presentation to a senior OPR official, after submission of any written response but before any action is taken. This hearing will be telephonic and evidence on behalf of the employee will consist of affidavits and other documentation submitted with the written response, unless good cause is shown why personal appearance or testimony by witnesses is necessary. Witnesses who do appear at such a hearing will be placed under oath and a verbatim recording of their testimony will be made by tape recording or a stenographic reporter. Travel and attorney costs are the responsibility of the employee.<sup>6</sup>

<sup>5</sup> Copies of such material will be retained in accordance with civil discovery policy and procedures. These documents are the property of the FBI and will be made available for review by an employee and his/her attorney within FBI office space and control.

<sup>6</sup> In the event an adverse disciplinary action is contemplated against a preference eligible employee, and consideration is given to holding a hearing after notice of a proposed adverse action has been given to an employee, OPR will consult with OGC to ensure that all applicable MSPB requirements are met. Whenever a witness is examined by an employee /employee's attorney, a similar opportunity for direct or cross examination will be given to an attorney designated by OGC. All hearings shall be informal, without strict regard to formal rules of evidence. Witnesses shall be sworn, and the official conducting a hearing will not be precluded from receiving evidence which the official considers to be relevant, material.

action and delivered as soon as practicable following completion of the disciplinary process described above; and

(7) an appeal as described below, in addition to any right of appeal to the Merit System Protection Board (MSPB) which may be available to preference eligible employees.

These protections will not apply to extraordinary cases which require immediate summary dismissal action. In such matters, I must preserve discretion to act without hesitation where the safety of the public, our fellow employees, national security interests or other compelling considerations may be at stake. However, to ensure that summary dismissal of an employee is exercised only under exigent and compelling circumstances, authority for that decision will not be delegated below the rank of Assistant Director.

**PROCEDURAL ENTITLEMENTS GRANTED TO A NEW EMPLOYEE DURING A PROBATIONARY PERIOD**

All individuals hired by the FBI are required to complete a probationary period of service, i.e., a period of current or continuous service in the same or a similar position following appointment. During this period, the FBI continues its efforts to confirm an individual's suitability and/or qualifications for the position for which he/she has been hired. Prior to my appointment as Director, it was our policy to afford all personnel a probationary period of one year following appointment — a practice which was consistent with the probationary period which must be accorded to a preference eligible employee. Because the post-employment validation of an individual's suitability for FBI positions is extremely important, we purposefully established a greater period of probation for newly hired Special Agents and Forensic Examiners. While this policy created a distinction which had not previously existed in the probationary period required of preference eligible and other FBI personnel, the policy is of significant importance to our screening of newly hired personnel. Only employees who have completed the probationary period

and not unduly repetitious:

Based upon statutory restrictions, a greater period of probation which impacts on their MSPB rights may not be imposed upon preference eligible personnel.



As an example, while most clerical, administrative and technical support personnel in the FBI are required to serve a one year probationary period following appointment, we now require non-preference eligible Special Agents and non-preference eligible Forensic Examiners in the Laboratory Division to complete a two year probationary period following appointment. Therefore, while preference eligible employees will continue to receive MSPA rights after one year, these enhanced procedural entitlements will be extended to Special Agents and/or Forensic Examiners only after they have successfully completed their two year probationary period. Personnel serving in most other FBI positions and preference eligible employees will be required to complete a one year probationary period before becoming entitled to the procedures described in this document.<sup>2</sup>

## RIGHT OF APPEAL IN DISCIPLINARY MATTERS

### A. CURRENT POLICY

Since becoming Director, I have taken steps to ensure that critical decision-making in the FBI occurs at proper levels within our organization. I have delegated authority to determine and impose discipline to Division/Office Heads, which is commensurate with their roles in our organization. At the same time, I have made it clear that I intend to hold each executive personally accountable for the quality of his/her investigation and/or adjudication of a disciplinary matter. I also took steps to ensure that the official responsible for deciding the appeal of any disciplinary action did not play a substantive role in the prior adjudicative process. In my view, the latter action reasonably contributes to the objectivity which an official deciding an appeal brings to his/her role in the appellate process. In the past, when a Field Division/Office Head imposed discipline on an individual, the employee's appeal of that disciplinary action has been decided by the Assistant Director, FD. While employees must have the right to appeal disciplinary sanctions, especially suspensions of more than fourteen days, demotion or dismissal, it is inappropriate to engage in a protracted or continuing appellate process. As a result, steps have been taken to limit the number of appeals which may be filed in disciplinary actions involving lesser sanctions, such as a letter of censure or an oral reprimand.

<sup>2</sup> When a non-preference eligible support employee is reappointed to a Special Agent position or another FBI position for which a specific probationary period has been established, that new probationary period must be satisfied before the employee receives the procedural entitlements described above.

OM : JUDICIAL WATCH

... have been made that the process should be improved. For the most part, those critical of our current procedures argue that officials responsible for appellate decisions lack the independence necessary to render an objective structure of the Bureau. In essence, they believe that personnel serving in the chain of command responsible for deciding disciplinary sanctions should not also be charged with appellate review of the appropriateness of those sanctions. They have also sought the right to make a personal appearance before the official deciding their case, and in certain situations have requested to present witnesses and/or conduct a review of facts relevant to the disciplinary action. In support of their requests they have noted that a preference eligible employee exercises similar procedural rights if he/she appeals an adverse disciplinary sanction to the MSPB.

There will be no change in current policy regarding the appeal of a lesser disciplinary sanction. However, the following procedures will be implemented to improve the appellate aspect of the FBI disciplinary process:

**Management Responsibility  
for Deciding Appeals of All Disciplinary Actions  
Involving Suspensions from Duty Without Pay,  
Demotion or Dismissal**

In an effort to ensure both the reality and appearance of an independent review of disciplinary sanctions at the time of appeal, I am placing responsibility for the appellate review of all disciplinary sanctions involving suspension from duty without pay, demotion or dismissal of non-SES personnel in a component other than the new OPR. Since OPR will report to the Deputy Director in disciplinary matters, responsibility for the appellate function will be assigned to another executive who reports directly to me.

The Assistant Director, INSD, currently reports to me personally due to his/her performance of a number of critical audit functions which require substantial objectivity and independence. In view of the current mission of the INSD and its location within the organizational structure of the Bureau, I am tasking the Assistant Director, INSD, with the management responsibility for the appellate functions in our disciplinary

## Time Limit to File an Appeal

To ensure a timely appellate process, a non-S&S employee desiring to appeal any suspension from duty without pay and/or an adverse disciplinary sanction will be required to file an appeal stating the grounds relied upon in writing. This appeal must be filed within thirty days following notification of the disciplinary action to the employee.

## Matters Involving a Non-S&amp;S Employee's Suspension from Duty Without Pay for a Period of 14 days or Less

Our past practice, which required appellate decisions in the disciplinary process to be made by an individual serving at or above the rank of the official who had imposed the sanction under appeal, contributed to the appellate official's objective and independent review of issues which had been raised in the appeal. In order to maintain that concept within the organizational structure of the INSD, specific levels of authority are being delegated to the AD and DAD, INSD, for appellate review of disciplinary sanctions.

The DAD, INSD will serve as the primary official responsible for the appellate review of disciplinary matters which have involved a non-S&S employee's suspension from duty without pay for a period of fourteen days or less, unless that disciplinary sanction was issued by the AD, OPA. Whenever the AD, OPA, serves as the deciding official in the suspension of a non-S&S employee from duty without pay for a period of fourteen days or less, the AD, INSD, will serve as the deciding appellate official. The decision of the AD or DAD, INSD, in such matters will constitute the final authority within the INSD for appellate review.

## Matters Involving a Non-S&amp;S Employee's Suspension from Duty Without Pay for a Period of More than 14 Days, Denotion or Dismissal

In order to enhance input concerning the appropriateness of a disciplinary action in which an appeal has been filed, additional changes are being made to the appellate process. When a matter under appeal involves a suspension for

In appellate cases which involve an employee of the INSD or in which the AD and DAD are both disqualified because of prior involvement or other considerations, the Assistant Director, FO, will exercise the authority and perform the duties otherwise handled by executives of INSD.

MEMORANDUM 1-1-92

COMPOSITION OF A DISCIPLINARY REVIEW BOARD (DRB)

(1) A DRB will be composed of three voting members, each of whom is a member of the FBI's SES.<sup>10</sup>

(2) The DRB will be chaired by the AD, INSD, whenever the disciplinary sanction was imposed by the AD, OPR. In instances in which the disciplinary action under appeal is decided by the DAD, OPR, at the discretion of the AD, INSD, the Board may be chaired by the DAD, INSE.

(3) A non-SES employee who appeals a suspension of more than fourteen days, demotion or dismissal will be permitted to select one member of the DRB from a list of all SES members, and the third member of the Board will be chosen by lot from the same list, excluding those serving at SES level 6;

(4) An SES member who serves as an employee's rating or reviewing official will not be permitted to serve as a member of a DRB which decides that individual's appeal of an adverse disciplinary sanction;

(5) If, after selection, a member of a DRB feels constrained to disqualify himself/herself, a replacement will be chosen in the same manner the disqualified member was selected.

INSD and Disciplinary Review Board Authority and Procedures

The following procedures will be observed by the INSD or a DRB within their respective appellate competence:

(1) INSD, in an appeal from a suspension of fourteen days or less, and a DRB, in an appeal of a suspension of more than 14 days, demotion or dismissal, will review the issues presented in writing by the employee.

<sup>10</sup> After designation as members of a DRB, employees will be instructed to refrain from acquainting themselves with any facts or circumstances involving the subject of the appeal, except to review the record of the case.

<sup>11</sup> These procedures will not apply to matters involving an appeal of an adverse disciplinary action resulting from an employee's loss of a security clearance.

under the auspices of OPR is insufficient to decide the merits of an appeal, INSD or the DRB may remand the case to OPR and direct such additional investigation and findings as may be necessary. Nothing shall preclude INSD or a DRB from requiring an oral presentation if considered helpful to a resolution of the appeal.

(2) An appeal of a suspension of fourteen days or less will be decided by the designated INSD official. The decision of a DRB in an appeal of a suspension of more than fourteen days, demotion or dismissal will be by majority vote;

(3) In exercising appellate authority, INSD and a DRB may independently redetermine the factual findings and/or the penalty imposed. However, in the event that a different disciplinary sanction is determined to be appropriate, that sanction must be consistent with applicable disciplinary precedent;

(4) After reaching a decision in the review of an appeal, INSD or a DRB will document its findings in writing and provide the employee a written decision;

(5) If INSD or a DRB finds that an employee has not received the procedural protections in the disciplinary process to which he/she is entitled, it may return the matter for decision, e.g., when the matter involves harmless error; may refer the matter back to OPR for corrective action; or may reverse or annul the action of the deciding official;

(6) The decision of INSD or of a DRB concerning the merits of an appeal involving a non-SES employee will constitute the final decision of the FBI concerning the appropriateness of the disciplinary sanction in the matter under appeal.

(7) Decisions by the INSD or a DRB in the appeal of disciplinary sanctions will be implemented no later than sixty calendar days after the appellate decision is rendered in writing.

The expansion of procedural entitlements in the appeal of disciplinary actions will not include the right of appeal to

### EMPLOYEE ASSISTANCE

From time to time, employees have also expressed concern over the level of sensitivity extended toward fellow employees who become subjects of administrative inquiries as the result of allegations of serious misconduct. Every employee has a right to the presumption of innocence during any inquiry concerning the propriety of his/her conduct. Moreover, some employees have suggested that reasonable efforts should be made to afford counseling under the provisions of our Employee Assistance Program (EAP) to subjects of OPR investigations. I am personally committed to the Program and fully recognize the significant service which that program provides to both our organization and its employees. Earlier in this communication I described the procedures which are employed to provide employees written notice of the initiation of an inquiry regarding alleged misconduct. In addition to fulfilling that purpose, these notices will be used to inform employees of EAP services available to every FBI employee, should they have a need for personal assistance.

### IMPLEMENTATION OF REVISIONS TO THE DISCIPLINARY PROCESS

I believe that the foregoing modifications to existing disciplinary policy convey my deep commitment to maintaining the highest standards of ethical conduct for our employees and my interest in protecting the right of every employee to a fair and timely adjudication of any allegation of serious misconduct. I want to very clearly reiterate, however, that this expansion of procedural due process protections in no way should be interpreted as a retreat from, or modification of, my "bright line" policy as articulated in my All SAC Airtel dated 1/3/94. There are certain types of behavior which are fundamentally inconsistent with continued FBI employment, and which I will not tolerate. The provision of these expanded due process protections to subject employees reinforces their responsibilities to be fully candid and totally cooperative during an administrative inquiry. Any violation of the standards set forth in my communication of 1/3/94, i.e., the "bright line" merits dismissal. Each SAC and Division Head must ensure that all employees are clearly advised of the contents of this

The statutory right to appeal an adverse disciplinary action to the MSPB is preserved for preference eligible employees.

FROM : JUDICIAL WATCH

The changes to our disciplinary process which are set forth herein will become effective 3/10/97. To give employees the maximum benefit of the revised/expanded adjudication/appeal procedures, they will apply as follows. If a case has been adjudicated but the appeal has not been decided as of 3/10/97, the new appellate procedures will apply. If a case has not been adjudicated, the enhanced procedural protections of the new disciplinary policy will apply to all further steps in the investigative/decisional process.

Manual changes to follow.

Louis J. Fraeh  
Director

MEMORANDUM

(1) When approved in accordance with 13-22.14, an employee who is required to submit to an employee interview may be requested to submit to a polygraph examination. The Bureau may draw an adverse inference from an employee's refusal to submit to such a polygraph examination, provided that such refusal alone shall not be the sole basis for disciplinary action against the employee.

(2) In the case of a security clearance adjudication, an employee's refusal to submit to a polygraph examination has the effect of denying the Security Programs Manager (SPM) the ability to complete a favorable security adjudication on the trustworthiness of the employee. The inability of the SPM to make an affirmative finding of trustworthiness will result in the revocation of an employee's Top Secret (TS) security clearance. Since a TS security clearance is a condition of employment, the FBI Personnel Officer is simultaneously advised of the revocation decision and thereafter the employee is dismissed from the rolls of the FBI.

(3) The following requirements must be satisfied if an employee is requested to submit to a polygraph examination pursuant to (1) and (2) above:

(a) The polygraph examination must be conducted in accordance with Bureau regulations for employee interviews;

(b) The employee must be advised of the consequences of a refusal to submit to a polygraph examination, and that failure to satisfactorily cooperate during a requested polygraph examination will be considered a refusal to submit to an examination;

(c) Prior to the examination, the examiner will obtain the examinee's agreement to be examined as polygraph (FD-323a, Employee Agreement To Interview With Polygraph In Connection With An Administrative Interview); and

(d) The investigation must concern a serious violation of law or policy involving one or more of the following situations:

- 1. The intentional and unauthorized release of sensitive protected information (including, for example, classified

PRINTED ON 10/20/03



disclosure by law or regulation) with the reasonable expectation that it would ultimately be disclosed to those from whom, the information is protected and would seriously and adversely affect an FBI function;

2. Serious questions concerning an employee's relationship with or allegiance to a foreign power;

3. The illegal or improper exercise of influence, coercive or otherwise, by an individual or group on an employee which could reasonably be expected to seriously affect or inhibit the employee in the impartial and effective performance of the employee's duties; or

4. The intentional and unauthorized destruction, mutilation, alteration, misplacement, taking, falsification, or other impairment of previously existing Bureau documents or evidence in the Bureau's possession or control.

5. Use of or unauthorized dealing in controlled substances, as defined under the Comprehensive Drug Abuse and Controlled Substances Act of 1970, Title 21, United States Code, by Bureau employees during the course of their employment.

6. The furnishing of false statements or the failure to candidly disclose information concerning prior criminal activities requested during the course of his/her employment proceeding. (See MEOG, Part 21, 13-22.13.4.)

7. Allegations, evidence or indications of theft, fraud and/or misuse involving money, credit cards, securities and/or property belonging to, or in the possession of or under the control of the United States Government.

EFFECTIVE: 10/13/92

PRINTED: 02/16/99