

FEDERAL BUREAU OF INVESTIGATION
FOI/PA DELETED PAGE INFORMATION SHEET
FOIPA Request No.: 1399934-000
CivilAction No.: 18-cv-1766

Total Withheld Page(s) = 606

Bates Page Reference	Reason for Withholding (i.e., exemptions with coded rationale, duplicate, sealed by order of court, etc.)
18-cv-01766-1292 – 18-cv-01766-1366	(b)(6)-1, (b)(7)(C)-1
18-cv-01766-1368 – 18-cv-01766-1450	(b)(6)-1, (b)(7)(C)-1
18-cv-01766-1452 – 18-cv-01766-1469	(b)(6)-1, (b)(7)(C)-1
18-cv-01766-1610 – 18-cv-01766-1704	Duplicate to Bates Pages 18-cv-01766-41 – 18-cv-01766-135
18-cv-01766-1705 – 18-cv-01766-1831	Duplicate to Bates Pages 18-cv-01766-136 – 18-cv-01766-262
18-cv-01766-1832 – 18-cv-01766-1880	Duplicate to Bates Pages 18-cv-01766-468 – 18-cv-01766-516
18-cv-01766-1881 – 18-cv-01766-1936	Duplicate to Bates Pages 18-cv-01766-263 – 18-cv-01766-318
18-cv-01766-1937 – 18-cv-01766-1946	Duplicate to Bates Pages 18-cv-01766-359 – 18-cv-01766-368
18-cv-01766-1947 – 18-cv-01766-2039	Duplicate to Bates Pages 18-cv-01766-744 – 18-cv-01766-836

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**OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)
REPORT OF INVESTIGATION**

File Number 263x-HQ-xxxxxx

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Adjudication Unit II [REDACTED]

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03/06/2018

RE: ANDREW G. MCCABE
DEPUTY DIRECTOR
DIRECTOR'S OFFICE

PREDICATION

This administrative inquiry, investigated by the Department of Justice, Office of Inspector General (OIG), was predicated on the allegations that Deputy Director Andrew G. McCabe: (1) lacked candor in an interview with the OIG on July 28, 2017, and in a second interview with the OIG on November 29, 2017, in violation of FBI Offense Code 2.6 (Lack of Candor – Under Oath); (2) lacked candor when discussing a October 30, 2016 *Wall Street Journal* article with FBI Director James Comey, and in an interview with FBI's Inspection Division on May 9, 2017,¹ in violation of Offense Code 2.5 (Lack of Candor – No Oath); and (3) disclosed, without authorization, the FBI's investigation into the Clinton Foundation, in violation of Offense Code 4.10 (Unauthorized Disclosure – Sensitive Information).² Based on a preponderance of the evidence, OPR concludes the allegations are substantiated. Based on the circumstances of this case, and considering the 12 *Douglas* Factors, including, but not limited to, consistency with precedent, the FBI's Penalty Guidelines, prior disciplinary history, and aggravating/mitigating factors, OPR recommends to the Deputy Attorney General that McCabe be dismissed from the rolls of the FBI.³

PERSONNEL HISTORY

McCabe. EOD [REDACTED] is an ES-0 Deputy Director. McCabe was rated

[REDACTED] Performance Appraisal Reports. BPMS shows he has received a

[REDACTED], and five SES Performance Awards (2010, 2011, 2012, 2014, and 2016). He is not a preference-eligible veteran. [REDACTED]

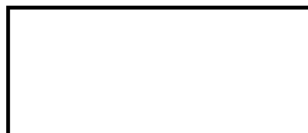
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¹ The OIG found that McCabe lacked candor under oath when he spoke to Inspection on May 9, 2017. However, it is unclear from the case file whether McCabe was under oath at the time he spoke with investigators about the article in question. Accordingly, OPR finds the May 9 interview is more appropriately considered not under oath.

² This administrative inquiry was opened after January 1, 2017, and thus will be analyzed under the FBI's 2017 Offense Codes and Penalty Guidelines.

³ Pursuant to the Deputy Attorney General's Memorandum dated May 27, 2008, to the Director of the FBI, the Justice Department has retained final decision-making authority over adverse actions impacting the Deputy Director of the FBI.

2637-HQ



- 27

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FBI 18-cv-01766-1274

DISCUSSION

The reader is referred to OPR investigative file 263x-HQ-xxxxxxx for a complete account of all the facts and circumstances regarding this matter.

October 23, 2016 *Wall Street Journal* Article

On October 23, 2016, the *Wall Street Journal* (WSJ) published an online article written by Devlin Barrett which stated that the Virginia Democratic Party and a political action committee (PAC) run by Virginia Governor Terry McAuliffe donated nearly \$675,000 to McCabe's wife's unsuccessful 2015 state senate campaign.⁴ The article described McAuliffe's close connection to Bill and Hillary Clinton, and noted that McCabe was an FBI official "who later helped oversee the investigation into Mrs. Clinton's email use."⁵

The WSJ article resulted in significant public discussion as to whether McCabe's subsequent oversight of the Clinton Email investigation was appropriate given his wife's connection to McAuliffe and the Virginia Democratic Party. McCabe's Special Counsel, Lisa Page, told the OIG, "[s]o that article comes out on Sunday. And it is like an enormous fire storm. It is hugely, you know, it's not only all over the news, but there's just a lot of swirl and churn associated with that fact coming out."⁶ According to the OIG's investigation, Senator Charles Grassley immediately called for McCabe's recusal. On October 27, 2016, in a meeting on the Clinton Email investigation, the FBI General Counsel (GC) suggested that McCabe, who was present by telephone, not be present for the discussion on the Clinton Email investigation. The GC acknowledged that the question of whether McCabe should recuse himself had not yet been settled, but out of an abundance of caution, the GC felt McCabe should not be in the meeting. Director Comey agreed and McCabe ended his call into the meeting.⁷

⁴ The print edition of the article was published on October 24, 2016.

⁵ The article acknowledged that McCabe played no role in his wife's 2015 state senate campaign and that he was promoted to FBI Deputy Director, with oversight of the Clinton Email investigation, months after his wife's defeat. McCabe did not have an oversight role in the Clinton Email investigation when his wife was running for office.

Then FBI Director James Comey told the OIG that he first learned of the issue regarding McCabe's wife and her connection to McAuliffe when McCabe emailed the Director on October 21, 2016, two days before the article was released, stating, "[The Office of Public Affairs (OPA)] informed me that Devlin Barrett at WSJ is putting together an article claiming I had a conflict of interest on [the Clinton Email investigation] as a result of Jill's campaign connections to Governor McAuliffe. I'll work with [OPA] to provide some basic facts to pushback." On October 23, 2016, McCabe emailed Comey, "Not too much in the update. The only additional notable news is that [OPA] and I spent a good part of the day trying to shape the Wall Street Journal's story on my alleged conflict..." which McCabe noted was to be released online.

⁶ Lisa Page OIG interview, 9/7/17, pg. 253.

⁷ In his 12/4/2017 interview with the OIG, McCabe stated that he dropped out of the call because the GC brought up the need to discuss classified information and McCabe was on an open line. McCabe denied that he was asked to leave the meeting due to the possibility of recusal or a conflict of interest.

On October 24, 2016, Barrett emailed Assistant Director Michael Kortan, Office of Public Affairs, to ask additional questions for a follow-up story he was working on.⁸ In that email, Barrett asked about McCabe's involvement in the Clinton Foundation investigation, among other things.⁹ Specifically, Barrett's email said that he was told that:

in the summer, McCabe himself gave some instruction as to how to proceed with the Clinton Foundation probe, given that it was the height of election season and the FBI did not want to make a lot of overt moves that could be seen as going after [Clinton] or drawing attention to the probe.

Barrett's email asked Kortan if this was accurate and if there was anything else Barrett should know.

McCabe was notified that Barrett was working on a follow-up story that would cover McCabe's oversight of the Clinton Foundation investigation in the face of Barrett's earlier article that McAuliffe gave significant campaign contributions to McCabe's wife. Page stated that she and McCabe believed that narrative being developed by the WSJ was inaccurate and McCabe authorized Page to speak to Barrett "to fix this story and give a complete picture."¹⁰ Page stated, "Andy [McCabe] directs me to work with Mike [Kortan] on a follow-up story with Devlin Barrett... So I am a source on background with Devlin at Andy [McCabe] and Mike's [Kortan] direction in order to try to correct the inaccurate sort of representations in that article."¹¹ Page advised that this was the first time she had communicated with the media in her official capacity at the FBI.

Page and Kortan were scheduled to speak with Barrett for the first time on October 27, 2016, in "receive mode," to hear what Barrett's story intended to address. Page and Kortan would then discuss an appropriate response and speak to Barrett a second time. McCabe was on personal travel from Thursday, October 27 – Sunday, October 30, 2016. Despite this, he maintained close contact with his Special Counsel regarding her and Kortan's progress with Barrett. According to text messages, on October 27, 2016, at 12:06 pm, McCabe texted Page, "Are you with wsj now." Page texted back that she was "going there now" and would call him "immediately after re call with devlin." A little over an hour later, Page texted McCabe asking if he was free to talk. Telephone records show that McCabe and Page spoke by telephone at 2:54 p.m. for approximately 51 minutes. According to Page, she briefed McCabe on her conversation with Barrett and a purported "stand down" order that McCabe had issued to agents working on the Clinton Foundation investigation. Page and McCabe discussed the inaccurate and inflammatory nature of Barrett's information. According to Page, McCabe cited his August 12,

⁸ Kortan has since retired from the FBI.

⁹ The Clinton Foundation investigation was a separate and distinct investigation from the Clinton Email investigation. Although the Clinton Email investigation was publicly acknowledged by the FBI, the Clinton Foundation investigation was not. When Director Comey was asked during Congressional testimony whether the FBI was investigating the Clinton Foundation, he declined to answer.

¹⁰ Lisa Page OIG interview, 9/7/17, pg. 280.

¹¹ Lisa Page OIG interview, 9/7/17, pg. 272.

2016 phone call with DOJ Principal Associate Deputy Attorney General (PADAG) Matthew Axelrod in which Axelrod expressed anger at McCabe that the FBI had not shut down the Clinton Foundation investigation based on Axelrod's misunderstanding of the situation. In that call, McCabe pushed back against Axelrod and told him that the FBI would continue to take appropriate and logical investigative steps in the Clinton Foundation investigation. McCabe then asked if Axelrod was telling McCabe "to shut down a validly predicated investigation," which Axelrod said he was not. According to Page, McCabe wanted to provide an account of his conversation with Axelrod to rebut the false "stand down" scenario that had been shared with the WSJ. Page's notes of her conversation with McCabe on October 27 include a notation "Fri. Aug 12 with [PADAG]" to remind her to discuss the telephone call with Barrett.

Text messages and phone records show that immediately before Page and Kortan spoke with Barrett for the second time on October 27, 2016, McCabe called Page and they spoke for six minutes. Page and Kortan then spoke to Barrett from 4:45 p.m. to 5:21 p.m. According to Page's contemporaneous notes and testimony to the OIG, in this call to Barrett she responded to claims regarding FBI leadership's handling of the Clinton Foundation investigation and provided the account of the August 12 phone call between McCabe and Axelrod. Later that evening, Page texted McCabe, "We're done. He's going to look at this story again and we'll circle back with him in the morning."

On October 28, 2016, Page and Kortan spoke to Barrett a third time. He gave them a preview of his revised story, which now included a report on the McCabe-Axelrod phone call. After this call ended, Page texted McCabe, "Just got off with Barrett. Give me a call here." McCabe called Page and they spoke for 23 minutes.

October 30, 2016 *Wall Street Journal* Article

On October 30, 2016, Barrett's follow-up article was published online.¹² The article mentioned Comey's stunning disclosure two days earlier, on Friday, October 28, that the FBI was taking another look at Hillary Clinton's emails days before the presidential election and discussed tension inside the FBI and DOJ on how best to proceed. The article again mentioned McAuliffe's campaign contributions to McCabe's wife's failed state senate campaign in 2015 and discussed McCabe's efforts to refocus "the Clinton Foundation probe[.]"¹³ The article reported that agents had been told to "[s]tand down" on the Clinton Foundation investigation and that "the order had come from the deputy director — Mr. McCabe," but also that "[o]thers familiar with the matter deny Mr. McCabe or any other senior FBI official gave such a stand-down instruction." The article described the August 12 conversation between McCabe and Axelrod (the latter identified only as a "senior Justice Department official"), stating:

According to a person familiar with the probes, on Aug. 12, a senior Justice Department official called Mr. McCabe to voice his displeasure at finding that

¹² The print edition of the article was published on October 31, 2016.

¹³ This represented the first public acknowledgment that the FBI had opened a criminal investigation into the Clinton Foundation. Director Comey had previously declined to answer questions about the existence of an investigation of the Clinton Foundation.

New York FBI agents were still openly pursuing the Clinton Foundation probe during the election season. Mr. McCabe said agents still had the authority to pursue the issue as long as they didn't use overt methods requiring Justice Department approvals.

The Justice Department official was "very pissed off," according to one person close to McCabe, and pressed him to explain why the FBI was still chasing a matter the department considered dormant...

"Are you telling me that I need to shut down a validly predicated investigation?" Mr. McCabe asked, according to people familiar with the conversation. After a pause, the official replied "Of course not," these people said.

Meeting with Director Comey on October 31, 2016

The following day, Monday morning, October 31, 2016, Comey held a staff meeting, attended by Page and McCabe, among others. During the meeting, according to Page's contemporaneous notes, Comey said, "Need to figure out how to get our folks to understand why leaks hurt our organization." In his statement to the OIG, Comey advised that he remembered reading the October 30, 2016 WSJ article and thinking, "what the hell[,] "I was very concerned about it for a number of reasons[,] "this was going to poison our relationship with the Department of Justice."¹⁴ Comey went on to say that his second reaction was, "what are we doing talking about what we're doing in an investigation..."¹⁵ He considered it a disclosure of sensitive FBI information. Comey stated, "I don't have a clear recollection, but I must have had some conversation with Andy [McCabe] about it where I took from it that he didn't do [it] and didn't authorize it."¹⁶ When questioned further by the OIG whether McCabe told Comey that McCabe authorized the disclosure, Comey stated, "No, no. Nope. In fact, likely told me the opposite. Definitely didn't tell me he authorized it and I think gave me the impression he didn't know what was going on."¹⁷ When asked again if McCabe told Comey that McCabe authorized Page to speak to the WSJ, Comey stated that McCabe said, "something like can you believe this crap? How does this stuff get out kind of thing? But I took from whatever communication we had that he wasn't involved in it..."¹⁸ Comey stated that he did not suspect that McCabe was the source of the disclosure based on what McCabe told him the morning after the article came out.

Comey told the OIG it is "very unlikely" "in fact approaching zero" that he would have authorized disclosure of the Axelrod telephone call if asked ahead of time. Comey stated that part of the reason for declining to disclose that information is that it explicitly confirms the

¹⁴ James Comey OIG interview, 11/16/2017, pgs. 301-302.

¹⁵ James Comey OIG interview, 11/16/2017, pg. 302.

¹⁶ James Comey OIG interview, 11/16/2017, pgs. 304-305.

¹⁷ James Comey OIG interview, 11/16/2017, pg. 305.

¹⁸ James Comey OIG interview, 11/16/2017, pgs. 314-315.

existence of a criminal investigation.¹⁹ Comey advised that when he disclosed the existence of the Russia investigation to Congress, he did so reading from a script that was carefully drafted and considered. He stated that disclosing a criminal investigation anonymously sourced in a newspaper is not something the FBI would do. Regarding the October 30, 2016 WSJ article, Comey stated, "I did not authorize this. I would not have authorized this."²⁰ Comey further stated that as the Director of the FBI, significant disclosures about investigations would always go through him because he is responsible for how the FBI interacts with the world. Comey stated that if the Deputy Director wanted to disclose information regarding an ongoing investigation, he would expect the Deputy Director to check with him first.

Inspection Division Interview of McCabe on May 9, 2017

The FBI Inspection Division was tasked with investigating various media leaks. One of the leaks pertained to an article written by [redacted] and published by [redacted] reporting that McCabe had made derogatory comments about former National Security Advisor Michael Flynn and President Trump during a private FBI executives meeting. On May 9, 2017, Section Chief (SC) Voviette Morgan and Supervisory Special Agent (SSA) [redacted] interviewed McCabe in his office concerning the leaks.²¹ Morgan and [redacted] (and SSA [redacted]) had previously interviewed McCabe in April 2017, following which [redacted] had prepared and emailed to McCabe a signed, sworn statement for McCabe's review, editing (if necessary), and signature. This May meeting was to go over the previously emailed statement about the [redacted] article and to ask McCabe about the October 30 WSJ article. Morgan advised that they met with McCabe in the privacy of his office.

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After going over changes to the previously emailed statement, Morgan showed McCabe a copy of the October 30 WSJ article, and directed his attention to the first three paragraphs on the last page which discussed the McCabe-Axelrod conversation. [redacted] stated, "we paused and let him read, read the article. I mean, he read the article, not just that piece. I think he refreshed his memory and flipped through the article."²² McCabe initialed the article to acknowledge that he read it.

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According to [redacted] McCabe indicated the WSJ article was "somewhat familiar" because he recalled reading it when it came out in October 2016.²³ [redacted] stated that McCabe said he did not know who leaked the information, "He didn't authorize it. He didn't direct anybody to give it out."²⁴ [redacted] recalls asking McCabe who he thought could have disclosed

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¹⁹ James Comey OIG interview, 11/16/2017, pg. 310.

²⁰ James Comey OIG interview, 11/16/2017, pg. 311.

²¹ May 9, 2017, is the same day that Director Comey was fired and McCabe became Acting Director of the FBI. This occurred after McCabe's meeting with Inspection.

²² [redacted] OIG interview, 10/5/2017, pg. 26.

²³ [redacted] OIG interview, 10/5/2017, pg. 26.

²⁴ [redacted] OIG interview, 10/5/2017, pg. 29.

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the information about his private telephone conversation because it seemed likely that only a few people would have been present during the phone call. According to [redacted] McCabe said he could not recall how many people were present or how many people he told the story to because he had related the story many times. At this point in time, [redacted] considered McCabe the victim of the leak.²⁵

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[redacted] account of the May 9 interview of McCabe is consistent with [redacted]. She stated that McCabe read the article and although she could not remember what he said verbatim, "the overarching issue, or take-away from it was that he did not grant anyone permission to divulge the information to the media. That he personally hadn't shared the information. And he hadn't granted anyone else permission to. And that he did consider it a media leak[.]"²⁶

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On May 12, 2017 [redacted] sent McCabe an email attaching a revised version of his signed, sworn statement, "You will note that your requested changes have been made, and we added a short paragraph, in parenthesis beginning on Page 10, relative to your recollection of circumstances pertaining to the [October 30] Wall Street Journal article we reviewed with you." The paragraph read:

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On 05/09/2017, SC Morgan and SSA [redacted] provided me with a photocopy of a Wall Street Journal article, dated 10/30/2016, and requested I evaluate and assess the content of the first three paragraphs appearing on the last page for accuracy. My assessment of the referenced portion of the article is that it is basically an accurate depiction of an actual telephonic interaction I had with a Department of Justice (DOJ) Executive. Since this event, I have shared the circumstances of this interaction with numerous FBI Senior Executives, and other FBI personnel. I do not know the identity of the source of the information contained in the article. I gave no one authority to share any information relative to my interaction with the DOJ Executive with any member of the media. *I initialed the photocopy of the article, which is attached to my statement as Exhibit #5.*

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(Emphasis in original.) [redacted] stated that there was no doubt in her mind that McCabe told her that he did not authorize the disclosure to the WSJ and that he did not know who had disclosed the information to the WSJ. [redacted] stated that she stands by what is contained in McCabe's draft statement.²⁷ The statement is consistent with contemporaneous notes taken by [redacted] during the interview.

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When McCabe failed to sign and return the statement to Inspection, it was emailed to him again by Inspection on June 23, 2017.

²⁵ [redacted] took contemporaneous notes throughout the interview of McCabe.

²⁶ [redacted] OIG interview, 12/20/2017, pg. 14.

²⁷ [redacted] OIG interview, 12/20/2017, pg. 40.

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OIG Interview of McCabe on July 28, 2017

On July 28, 2017, the OIG interviewed McCabe under oath regarding a separate matter. The OIG told McCabe that it would not be covering issues related to McCabe's recusal in the [redacted] investigation. The OIG showed McCabe certain text messages exchanged between McCabe's Special Counsel Lisa Page and Counterintelligence Deputy Assistant Director (DAD) Peter Strzok.²⁸

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The OIG referred McCabe to the October 30, 2016 WSJ article written by Devlin Barrett and told McCabe there was information in the Page/Strzok texts also on October 30, 2016, indicating Page had spoken to the press. The OIG showed McCabe a text in which Strzok forwarded a *Washington Post* article that was critical of the FBI to Page, and Strzok wrote, "This is all [Axelrod]." Page responded, "Yeah, I saw it. Makes me feel WAY less bad about throwing him under the bus in the forthcoming CF article."

The OIG told McCabe it believed Page's October 30 text related to the WSJ's article later that same day revealing the Clinton Foundation investigation and the McCabe-Axelrod telephone conversation. McCabe responded, "I don't know what she's referring to."²⁹ McCabe then stated the OIG's questions exceeded the scope of the OIG's current investigation for which it was questioning him, and that he did not want to "get into discussing the article" with the OIG. The OIG asked, "Was she ever authorized to speak to reporters in this time period, was Lisa Page?" McCabe responded, "Not that I'm aware of."³⁰ McCabe went on to say, "I was not even in town during those days. So I can't tell you where she was or what she was doing."³¹

McCabe Phone Call to OIG on August 1, 2017

Four days later, on August 1, 2017, McCabe called Assistant Inspector General Dan Beckhard to provide additional information about matters discussed during McCabe's July 28 OIG interview. Beckhard memorialized the phone conversation in an email, which reads in relevant part:

First, he [McCabe] stated that he believes that Lisa Page may have been authorized by him to work with AD Michael Kortan (Public Affairs) and to speak with the WSJ for the late October article. He said he had worked with Page on a previous WSJ article earlier in the month when they spent the day trying to correct inaccuracies. At the time the second article was being prepared, McCabe was out of town [redacted]. He believes he may have authorized Page to work with Kortan and speak to Devlin Barrett (the WSJ reporter) because she

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²⁸ Page has since been reassigned to the Office of General Counsel. Strzok has since been reassigned to the Human Resources Division.

²⁹ Andrew McCabe OIG interview, 7/28/2017, pg. 31.

³⁰ Andrew McCabe OIG interview, 7/28/2017, pg. 31.

³¹ Andrew McCabe OIG interview, 7/28/2017, pg. 32.

had previously worked with McCabe on the issues raised by his wife's political campaign and was very familiar with those issues.

Inspection Division Interview of Lisa Page on August 7, 2017

On August 7, 2017, Page was interviewed by SC Morgan and SSA [redacted]. The investigating agents showed Page the October 30 WSJ article and she acknowledged that she was familiar with it. Page told Morgan and [redacted] that McCabe told her to work with Kortan to speak with Barrett "on background" and provide him with information to help shape his next article. She advised that she spoke to Barrett by telephone on October 27 and 28, 2016. Page signed a sworn statement to this effect on August 15, 2017. Page was also interviewed by the OIG on September 7 and October 26, 2017, in which she gave the same account.

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Inspection Division Interview of McCabe on August 18, 2017

After learning from Page that McCabe authorized Page to speak to Barrett, [redacted] and [redacted] re-interviewed McCabe on August 18, 2017. [redacted] showed McCabe the earlier draft statement that Inspection prepared for McCabe to sign (he never did) and the October 30 WSJ article again. [redacted] stated that he asked McCabe, "I want to ask you about this article because we're, we're having conflicting information. And so I need to know from you, did you authorize this article? Were you aware of it? Did you authorize it?"³² [redacted] advised that McCabe read the article and said, "yep. Yep I did."³³ [redacted] was taken aback and stated that he told McCabe, "sir, you understand that we put a lot of work into this based on what you've told us. I mean, and I even said, long nights and weekends working on this, trying to find out who amongst your ranks of trusted people would, would do something like that." According to [redacted] McCabe "kind of just looked down, kind of nodded, and said, yeah, I'm sorry."³⁴ McCabe apologized and told [redacted] and [redacted] that "there was a lot going on then."

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[redacted] reported the new information to his supervisors in the Inspection Division and recommended they turn the matter over to the OIG. Nancy McNamara, Assistant Director, Inspection Division, agreed and referred the matter to the OIG. The OIG formally accepted the referral on August 31, 2017.

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OIG Interview of McCabe on November 29, 2017

Authorization

On November 29, 2017, the OIG interviewed McCabe under oath again, this time focusing on the WSJ disclosure. During the interview, McCabe told the OIG that he authorized Kortan and Page to speak to Barrett to try to correct what McCabe perceived as "incredibly

³² [redacted] OIG interview, 10/5/2017, pg. 45.

³³ [redacted] OIG interview, 10/5/2017, pg. 46.

³⁴ [redacted] OIG interview, 10/5/2017, pgs. 47-48.

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damaging inaccuracies" in his story.³⁵ McCabe described the first WSJ article as "creat[ing] a false narrative that I had been exercising my judgment in a political way. And this article continued in that direction, which I thought was incredibly damaging for us as an organization."³⁶ McCabe stated that he thought having Kortan and Page speak to Barrett "was the right thing to do" and that he "felt very confident doing it."³⁷ When asked what sparked his recollection of authorizing Kortan and Page, McCabe denied speaking to Page or Kortan about the matter, and simply stated that he thought a lot about it.

Director Comey

The OIG asked McCabe if, prior to authorizing Page and Kortan to speak to Barrett, he discussed the matter with Comey. McCabe stated that he did not remember discussing it with Comey beforehand, but did recall discussing the article with Comey in person on Monday, October 31, the day after the article was published:

[W]e talked about the article. I asked him his thoughts about it. He thought it was, you know, he had the same impression as I did that it was really kind of a one-sided narrative supported by a lot of spurious information. But he thought that it was good that we at least had gotten the, the, you know, the information, that they at least presented information that indicated that, no, that's not who we are. That we are, that we're independent and doing our job. We discussed the fact that the Department was likely to be pretty angry, and specifically Matt Axelrod was, was unhappy about that the fact that this may, that this made its way into the paper.

The OIG asked McCabe, "are you telling him at this time, hey boss, I authorized Kortan and Page to disclose the account of the August 12th call?" McCabe stated, "Yes. He knew that." The OIG repeated, "You told him that?" McCabe stated, "Yes." The OIG asked McCabe for Comey's reaction. McCabe stated, "He did not react negatively, just kind of accepted it." The OIG continued to question McCabe and asked, "Did he have any reaction to the fact that by disclosing the account of the August 12th call, even though it's not a direct quote attributed to you. It essentially is in substance confirming the existence of the Clinton Foundation investigation. Did he have any reaction to that?" McCabe replied, "He did not."³⁸

McCabe further claimed that the fact that Kortan and Page spoke to Barrett was not a secret and that people generally knew McCabe authorized the disclosure because it was his private conversation with Axelrod that was disclosed.³⁹

³⁵ Andrew McCabe OIG interview, 11/29/2017, pg. 20.

³⁶ Andrew McCabe OIG interview, 11/29/2017, pg. 58.

³⁷ Andrew McCabe OIG interview, 11/29/2017, pg. 62.

³⁸ Andrew McCabe OIG interview, 11/29/2017, pgs. 94-96.

³⁹ Andrew McCabe OIG interview, 11/29/2017, pg. 106.

Interviews with Inspection Division

The OIG also questioned McCabe about his interviews with Inspection. McCabe incorrectly recalled being interviewed by Morgan, [redacted] and [redacted] on May 9, 2017.⁴⁰ He advised that as [redacted] and [redacted] were walking out of his office, Morgan "kind of grabbed [him] by the arm" to ask him something.⁴¹ He advised that Morgan then showed him the October 30 WSJ article. He told her that he knew about the article. McCabe stated that he does not recall reading the WSJ article when Morgan handed it to him.⁴² McCabe stated:

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I remember being like kind of confused about why she was even bringing it up because it had nothing to do with what I had asked them to, to investigate, so I was trying to kind of connect the two and understand what the relevance was. And she asked me a question or two about it. And that was it. It was a very quick exchange.⁴³

McCabe stated that he later received the draft statement from Inspection "that reflected [the interview] in a way that I thought was inaccurate."⁴⁴

McCabe was asked whether he believed he told Morgan, [redacted] and [redacted] that he gave authorization for the WSJ disclosure, and that their recollections to the contrary are wrong. McCabe stated, "I'm telling you that I don't know exactly what we discussed in that May 9th meeting. But to be perfectly honest, May 9th, prior to Director Comey's firing and learning of that from the AG later that evening, everything that happened prior to that moment is a little bit distant for me."⁴⁵

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McCabe stated that he raised the issue of the inaccurate statement with Morgan in a later meeting and told her that he authorized Page and Kortan to speak to Barrett. McCabe said that Morgan seemed surprised and he suggested that she coordinate with the OIG. McCabe stated that he did not attempt to correct the statement when he received the drafts by email. He stated that he was the Acting Director at the time and was focused on that. He stated that once he got back to his Deputy Director role, he worked to resolve the outstanding issues with Inspection. McCabe told the OIG that he did not remember when he actually looked at the draft statement but that it could have been months later.

⁴⁰ McCabe repeatedly told the OIG that all three Inspection Division investigators, Morgan, [redacted] and [redacted] were present. In fact, only two investigators were present during the interviews on May 9 (Morgan and [redacted]) and August 18 ([redacted] and [redacted]). However, all three were present when they first interviewed McCabe in April 2017.

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⁴¹ Andrew McCabe OIG interview, 11/29/2017, pg. 142.

⁴² Andrew McCabe OIG interview, 11/29/2017, pg. 145.

⁴³ Andrew McCabe OIG interview, 11/29/2017, pg. 143.

⁴⁴ Andrew McCabe OIG interview, 11/29/2017, pg. 143.

⁴⁵ Andrew McCabe OIG interview, 11/29/2017, pg. 157.

ANALYSIS

A. Lack of Candor – Under Oath

According to FBI Offense Code 2.6, employees are prohibited from “[k]nowingly providing false information in a verbal or written statement made under oath. This misconduct includes false statements, misrepresentations, the failure to be fully forthright, or the concealment or omission of a material fact/information.”

1. Interview with OIG on July 28, 2017

During his July 28, 2017 interview under oath with the OIG, after being shown Page’s October 30 text concerning having thrown Axelrod “under the bus” in a forthcoming article, McCabe falsely stated that he was not aware that Page was authorized to speak to reporters at that time. He also falsely stated that because he was out of town, he did not know where Page was or what she was doing at that time. In fact, as McCabe later admitted, he did authorize Page to speak to Barrett for the October 30 WSJ article, and he was aware of what she was doing because he stayed in constant contact with her through texts and phone calls. Although McCabe did not know he was going to be questioned about the WSJ article before sitting down with the OIG on July 28, the interview was voluntary and he had the opportunity to end it at any time. Instead, McCabe provided false information.

2. Interview with OIG on November 29, 2017

OPR further finds that McCabe lacked candor under oath during his November 29, 2017 OIG interview when he falsely told the OIG that: (a) he told Comey on October 31, 2016, that he (McCabe) had authorized the disclosure to the WSJ and that Comey agreed it was a “good” idea; and (b) he did not deny to the Inspection agents on May 9 that he had authorized the disclosure to the WSJ.

As discussed below, OPR credits Comey’s recollection of his conversation with McCabe regarding the WSJ article on October 31, the gist of which was that McCabe had not authorized the leak the prior day and did not know who was behind it. Accordingly, OPR finds McCabe’s statement to the OIG that he (McCabe) told Comey he authorized the disclosure to the WSJ and that Comey agreed it was a “good” idea is false.

Also, as discussed below, the testimony of [REDACTED] contemporaneous notes of the interview, and the draft statement prepared shortly thereafter show that McCabe denied authorizing the disclosure in his interview with Inspection on May 9. His statement to the contrary is false.

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Based on a preponderance of the evidence, OPR concludes the allegation that McCabe violated Offense Code 2.6 is substantiated.

B. Lack of Candor – No Oath

According to FBI Offense Code 2.5, employees are prohibited from “[k]nowingly providing false information when making a verbal or written statement, not under oath, to a supervisor, another Bureau employee in an authoritative position, or another governmental agency, when the employee is questioned about his conduct or the conduct of another person. This misconduct includes false statements, misrepresentations, the failure to be fully forthright, or the concealment or omission of a material fact/information.”

1. Meeting with Director Comey on October 31, 2016

McCabe lacked candor in his conversation with Director Comey on October 31, 2016, when they discussed the October 30 WSJ article. Comey told the OIG, “I don’t have a clear recollection, but I must have had some conversation with Andy [McCabe] about it where I took from it that he didn’t do [it] and didn’t authorize it.”⁴⁶ When questioned further as to whether McCabe told Comey that he (McCabe) authorized the disclosure, Comey stated, “No, no. Nope. In fact, likely told me the opposite. Definitely didn’t tell me he authorized it and I think gave me the impression he didn’t know what was going on.”⁴⁷ Again, Comey later stated when asked if McCabe told him about authorizing Page to speak to the WSJ, McCabe said, “something like can you believe this crap? How does this stuff get out kind of thing? But I took from whatever communication we had that he wasn’t involved in it...”⁴⁸ Comey stated that he did not suspect that McCabe was the source of the disclosure based on what McCabe told him the morning after the article came out. Although it appears that Comey never directly asked McCabe if he authorized, or made the disclosure, McCabe’s overall statements to Comey were deceptive. McCabe owed it to Comey, his immediate supervisor and the Director of the FBI, to be forthcoming and transparent in his discussions with Comey about any matter, much less one of such significance.

Comey was concerned about leaks in general and this disclosure in particular because he was concerned it would poison the FBI’s relationship with DOJ. Therefore, OPR does not credit McCabe’s account that he told Comey that he authorized the disclosure and that Comey “did not react negatively, just kind of accepted it.” Additionally, McCabe’s failure to be forthright with Comey is consistent with his behavior in denying authorizing the disclosure up until he was confronted with Page’s texts by the OIG on July 28, 2017. OPR therefore credits Comey’s account.

2. Interview with INSD on May 9, 2017

[REDACTED] both stated that McCabe told them on May 9, 2017, that he did not know who authorized the disclosure of the McCabe-Axelrod call to the WSJ. [REDACTED] stated that

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⁴⁶ James Comey OIG interview, 11/16/2017, pgs. 304-305.

⁴⁷ James Comey OIG interview, 11/16/2017, pg. 305.

⁴⁸ James Comey OIG interview, 11/16/2017, pgs. 314-315.

there was no doubt in her mind that McCabe told her that he did not authorize the disclosure to the WSJ and that he did not know who disclosed the information to the WSJ. [] stated that McCabe told him, "[h]e didn't know who gave it out. He didn't authorize it. He didn't direct anybody to give it out." [] noted that McCabe took time to read the WSJ article and initialed it, indicating that he reviewed it. McCabe had an opportunity to refresh his recollection of the article at issue and still gave a false answer. [] accounts are consistent with each other and are corroborated by [] contemporaneous notes of the interview and the draft statement that [] prepared for McCabe's signature shortly after the interview. OPR credits their account of their May 9 interview and finds that McCabe lacked candor in his May 9 interview with Inspection.

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Based on a preponderance of the evidence, OPR concludes the allegation that McCabe violated Offense Code 2.5 is substantiated.

C. Unauthorized Disclosure

According to FBI Offense Code 4.10, without authorization, employees are prohibited from "disclosing or attempting to disclose the FBI's, or another agency's, sensitive material."

There is a general prohibition on disclosing information about an ongoing criminal investigation. The Clinton Foundation investigation was especially sensitive, having, as it did, a connection to a presidential campaign. Comey declined to confirm the existence of the Clinton Foundation investigation in his testimony to Congress in July 2016. When questioned by the OIG, Comey stated that nobody in the FBI was authorized to publically confirm the Clinton Foundation investigation. Comey considered the information contained in the October 30 WSJ article to be a disclosure of sensitive FBI information. Comey advised that the default rule is that the FBI does not discuss open investigations but would consider whether the public interest requires it. McCabe's decision to confirm the existence of the Clinton Foundation investigation through an anonymously sourced quote, recounting the content of a phone call with a DOJ Executive, was not within the public interest exception.

Based on a preponderance of the evidence, OPR concludes the allegation that McCabe violated Offense Code 4.10 is substantiated.

DOUGLAS FACTORS

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

McCabe's offenses are extremely serious and directly related to his position and responsibilities as an FBI executive. All FBI employees are expected to tell the truth and demonstrate the utmost integrity at all times. His misconduct was intentional, and while it was a one-time disclosure, McCabe repeatedly failed to be fully forthright about whether he authorized the disclosure.

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

McCabe is the Deputy Director of the FBI. Several Assistant Directors and other component heads reported directly to him. His role was extremely prominent as he was second-in-command of the FBI, heading the daily operations of the Bureau. McCabe interacted with the highest levels of the government and a wide array of other government and private entities and individuals.

3. The employee's past disciplinary record.

[REDACTED]

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4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

McCabe has 21 years of FBI service. He was rated [REDACTED]
Performance Appraisal Reports. BPMS shows he has received a [REDACTED]
[REDACTED]
[REDACTED] and five SES Performance Awards (2010, 2011, 2012, 2014, and 2016).

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5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

McCabe's offenses have severely impacted his ability to perform at a satisfactory level. OPR finds that McCabe cannot satisfactorily perform his assigned duties when he has irrevocably broken the trust the FBI placed in him.

6. Consistency of the penalty with those imposed on other employees for the same or similar offense.

As courts have often concluded, "[a]n agency need not exercise its discretion identically in every case. A penalty that is within the authority of the agency is not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases and mere unevenness in the application of the sanction does not render its application in a particular case unwarranted in law." *Villela v. Dep't of the Air Force*, 727 F.2d 1574, 1577 (Fed. Cir. 1984); see *Schoemer v. Dep't of the Army*, 81 MSPB 363, 367 (1999) (stating "the Board has consistently found that allegations of disparate penalties provide no basis for reversal or mitigation where the punishment is appropriate to the seriousness of an employee's offense"). OPR must ascertain the appropriate penalty for misconduct in every substantiated case. Precedent is a helpful resource. Thus, OPR reviewed the 444 cases under Offense Codes 2.6, 2.5, and 4.10 (as of March 6, 2018), which reflect penalties ranging from oral reprimand to summary dismissal. After reviewing the 444 precedent cases, OPR concludes the recommended

penalty is consistent with those imposed upon other employees for the same or similar offenses.⁴⁹

7. Consistency of the penalty with any applicable agency table of penalties.

The recommended sanction is consistent with the FBI's Penalty Guidelines.

8. The notoriety of the offense or its impact upon the reputation of the agency.

When the notoriety of the offenses becomes known, it will, without question, significantly damage the reputation of the FBI.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

McCabe is aware of the FBI's standards of conduct and the obligation to tell the truth at all times.

10. Potential for employee's rehabilitation.

OPR finds that McCabe's offenses demonstrates he has failed to act with integrity at all times and has broken the FBI's trust in him

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

From October 2016 through August 2017, McCabe, as both Deputy Director and then as Acting Director, was under intense, even unimaginable, scrutiny dealing with a variety of highly sensitive matters that generated a significant amount of controversy.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

OPR does not believe that alternative sanctions are appropriate in this matter.

PENALTY DETERMINATION

When determining an appropriate penalty, OPR considered the 12 *Douglas* Factors, including, but not limited to, consistency with precedent, the FBI's Penalty Guidelines, prior disciplinary history, and aggravating/mitigating factors.

⁴⁹ The discussion above is designed to document that OPR has considered the applicable precedent. It does not, and is not intended to, convey the full extent of OPR's analysis of these precedents. OPR has carefully reviewed and weighed every precedent serialized into the investigative file. OPR's penalty determination is driven primarily by the facts of the case before it, including applicable mitigators and aggravators, with precedent review serving to promote general consistency and uniformity.

The investigation establishes McCabe violated FBI Offense Code 2.6 (Lack of Candor – Under Oath). The standard penalty is dismissal. This Offense Code does not include a mitigated or aggravated range.

The investigation establishes McCabe violated FBI Offense Code 2.5 (Lack of Candor – No Oath). The standard penalty is a 14-day suspension. Mitigating factors warrant a letter of censure to a ten-day suspension, and aggravating factors warrant a 20-day suspension to dismissal.

The investigation establishes McCabe violated FBI Offense Code 4.10 (Unauthorized Disclosure - Sensitive Information). The standard penalty is a seven-day suspension. Mitigating factors warrant a letter of censure to a five-day suspension, and aggravating factors warrant a ten-day suspension to dismissal.

OPR has considered all mitigating factors supported by the record, including, but not limited to, McCabe's 21 years of remarkable FBI service and his truly outstanding performance record. At the time of the misconduct, McCabe was facing unprecedented and unimaginable pressure and challenges. Notwithstanding all relevant and significantly mitigating factors, however, OPR finds that dismissal is appropriate because all FBI employees know that lacking candor under oath results in dismissal and that our integrity is our brand. Without it, we are nothing. As the Deputy Director, McCabe held the second-highest position in the FBI and is expected to comport himself with the utmost integrity. Despite this, McCabe repeatedly lacked candor with the Director of the FBI, the OIG, and the FBI's Inspection Division. McCabe's lack of candor is incompatible with the FBI's Core Values. Based on the circumstances in this case, OPR concludes that McCabe should be dismissed from the rolls of the FBI for his violations of FBI Offense Codes 2.6, 2.5, and 4.10.

CONCLUSION

Based on a preponderance of the evidence, OPR concludes McCabe violated FBI Offense Codes 2.6, 2.5, and 4.10. Based on the circumstances of this case, OPR recommends to the Deputy Attorney General that McCabe be dismissed from the rolls of the FBI for his 2.6, 2.5, and 4.10 offenses.

- 1 – Deputy Attorney General, Department of Justice
- 1 – Director, FBI
- 1 – Deputy Director, FBI
- 1 – OIG, DOJ
- 1 – AD, OPR
- 1 – 263X-HQ-xxxxxxx
- 1 – Tickler Copy, OPR



b6 -1
b7C -1

3/7/18

Call
3/7/18

PRECEDENT

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 07-24-2018 BY [REDACTED]

NSICG b6 -1

b7C -1

Lack of Candor/Lying - Under Oath (2.6)

A review of precedent cases from 11/2004 to the current date, wherein employees have been charged with conduct described by offense code 2.6, reflected that there have been 171 precedent cases involving 174 employees referencing this violation, with penalties ranging from DISMISSAL to SUMMARY DISMISSAL.

To maintain the anonymity of the person(s) involved, the term "he" is being used to refer to both genders.

OPR# [REDACTED] b6 -1 02/28/2018 b6 -1
b7C -1 b7C -1

[REDACTED]

MITIGATION: [REDACTED] b6 -1
b7C -1

AGGRAVATION: [REDACTED]

FINAL ACTION(S): OPR PROPOSED DECISION Proposed DISMISSAL b6 -1
OPR FINAL DECISION: DISMISSAL b7C -1

OPR# [REDACTED] b6 -1 01/26/2018 b6 -1
b7C -1 b7C -1

[REDACTED]

MITIGATION: [REDACTED] b6 -1
b7C -1

AGGRAVATION: [REDACTED]

FINAL ACTION(S): OPR PROPOSED DECISION Proposed DISMISSAL b6 -1
OPR FINAL DECISION: DISMISSAL b7C -1

PRECEDENT

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 07-25-2018 BY [REDACTED]

NSICC b6 -1
b7C -1

Lack of Candor/Lying - No Oath (2.5)

A review of precedent cases from 11/2004 to the current date, wherein employees have been charged with conduct described by offense code 2.5, reflected that there have been 207 precedent cases involving 209 employees referencing this violation, with penalties ranging from ORAL REPRIMAND to SUMMARY DISMISSAL.

To maintain the anonymity of the person(s) involved, the term "he" is being used to refer to both genders.

OPR#

b6 -1
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02/09/2018

b6 -1
b7C -1

SA executed a Last Chance Agreement.

MITIGATION:

b6 -1
b7C -1

AGGRAVATION:

FINAL ACTION(S): OPR PROPOSED DECISION Proposed DISMISSAL

b6 -1
b7C -1

OPR FINAL DECISION: REQUIRED TO SIGN A "RETURN TO WORK" AGREEMENT

OPR FINAL DECISION: 60 CALENDAR DAYS SUSPENSION WITHOUT PAY

PRECEDENT

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 07-25-2018 BY [REDACTED]

NSICG b6 -1

b7C -1

Unauthorized Disclosure - Sensitive Information (4.10)

A review of precedent cases from 11/2004 to the current date, wherein employees have been charged with conduct described by offense code 4.10, reflected that there have been 60 precedent cases involving 61 employees referencing this violation, with penalties ranging from ORAL REPRIMAND to SUMMARY DISMISSAL.

To maintain the anonymity of the person(s) involved, the term "he" is being used to refer to both genders.

OPR# [REDACTED] b6 -1
b7C -1 06/06/2017 b6 -1
b7C -1

MITIGATION: [REDACTED]

AGGRAVATION: [REDACTED]

b6 -1

b7C -1

FINAL ACTION(S): OPR PROPOSED DECISION Proposed 15 CALENDAR DAYS SUSPENSION WITHOUT PAY

OPR FINAL DECISION: LETTER OF CENSURE

OPR# [REDACTED] b6 -1
b7C -1 04/20/2017 b6 -1
b7C -1

Appellate decision - Due to the appellant's request to withdraw appeal, the case was administratively closed.

MITIGATION: [REDACTED]

AGGRAVATION: [REDACTED]

b6 -1

b7C -1

FINAL ACTION(S): OPR FINAL DECISION: 5 CALENDAR DAYS SUSPENSION WITHOUT PAY

OPR FINAL DECISION: CLOSED ADMINISTRATIVELY

OPR# [REDACTED] b6 -1
b7C -1 07/22/2016 b6 -1
b7C -1

NOTE: [REDACTED]

b6 -1

b7C -1

AGGRAVATION: [REDACTED]

b6 -1

b7C -1

FINAL ACTION(S): OPR PROPOSED DECISION Proposed DISMISSAL

OPR FINAL DECISION: DISMISSAL

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29

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b7C -1

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DATE 07-30-2018 BY



NSICG b6 -1
b7C -1



U.S. Department of Justice
Federal Bureau of Investigation

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DATE 07-30-2018 BY

NSICG b6 -1
b7C -1

3/7/18

Director Wray and Deputy Director Brodich,

This is FBI OPR's initial action (first step) in the McCabe WST leak matter. Pursuant to standard procedures, the attached letter (but not the enclosed Report of Investigation) will now be provided to Mr. McCabe and his attorneys. The enclosed letter and ROI will now also be provided to the DAG as he has final decision making authority over adverse disciplinary actions impacting the DD. It seems unlikely that this will reach final resolution before Mr. McCabe's March 18 retirement date, but that is up to the DAG.

Cardice



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D. C. 20535-0001

February 28, 2018

Ms. Candice Will
Office of Professional Responsibility
Federal Bureau of Investigation
950 Pennsylvania Avenue N.W.
Room [REDACTED]
Washington, DC 20530-0001

b6 -1
b7C -1
b7E -4

RE: Letter from James R. Clapper, Jr., dated February 25, 2018

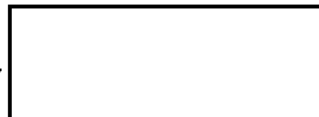
Dear Ms. Will:

We recently received the enclosed letter from former-Director of National Intelligence James R. Clapper, Jr. We are forwarding it for such use as you see fit.

Sincerely,

Dana J. Boente
General Counsel
Federal Bureau of Investigation

263D-HQ-



30

b6 -1
b7C -1

JAMES R. CLAPPER, JR.

LT. GENERAL, USAF RETIRED

[REDACTED] b6 -3
b7C -3

25 Feb 2018

The Honorable Christopher Wray
Director, Federal Bureau of Investigation
935 Pennsylvania Ave, N.W.
Washington, D.C. 20535

Dear Director Wray:

The purpose of this letter is to convey my views to you of Andy McCabe, who, as you well know, has recently come under intense, biased scrutiny and a firestorm of criticism, which, in my view, are completely unjustified and profoundly unfair.

As Director of National Intelligence from 2010 to 2017, I worked with, and came to know Andy in several capacities at the FBI, most notably as Assistant Director in charge of the Washington Field Office, and then as Deputy Director. We often appeared as witnesses together at Congressional hearings, where, as you also know, "bonds" with fellow witnesses can quickly form. I came to know and rely on Andy as steady, straightforward,

(2)

candid, forthright, and honest.

I consider Andy the consummate public servant, who epitomizes the motto of the Bureau: Fidelity, Bravery, Integrity. I have tremendous regard for Andy's professional competence, broad-gauged expertise, seasoned leadership, sharp intellect, ~~and~~ insightful wisdom, unwavering commitment to the mission, self-effacing humility, staunch devotion to the men and women of the Bureau, and, importantly, his impeccable integrity.

I would hope you will consider my observations, which I know are shared uniformly by virtually everyone who knows Andy, and will use your influential voice to insure he is able to complete his career and retire after his 21 years of distinguished service to the Bureau and this nation.

With Respect,

-Jim Garner DNI 2010-2017

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Monday, March 05, 2018 12:10 PM
To: Rosenstein, Rod (ODAG) (JMD)
Subject: IG Report
Attachments: 5-27-2008 DAG Memo re FBI SES Positions.pdf

DAG Rosenstein:

FBI OPR received the IG's "Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe" on February 28. We have completed our review of the Report and underlying investigative materials and we are in the process of preparing our proposed action. When we complete our proposed action, we will provide it to you and, pursuant to FBI procedure, to Mr. McCabe. Upon the execution of his attorney's non-disclosure agreement, we will also provide a copy of our proposed action to Mr. McCabe's attorney, Michael Bromwich. Thereafter, Mr. McCabe and Mr. Bromwich may review our file and prepare a written response to the proposed action. Pursuant to the DAG's May 27, 2008 Memo to the FBI Director (copy attached), the Department has retained final decision-making authority over adverse actions impacting the Deputy Director. Our proposed action will be adverse, therefore the Department will have final decision-making authority. In the normal course, once an FBI employee has provided his/her written response to FBI OPR's proposed action, FBI OPR would schedule an oral hearing. We will do so in this case subject to your approval. Thank you.

Candice Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
[REDACTED]

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b7C -1
b7E -4

263D-HQ

31

b6 -1
b7C -1

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

May 27, 2008

MEMORANDUM FOR THE DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

FROM:

Mark Philip *Mark Philip*
Deputy Attorney General

SUBJECT:

Updated Delegation of Authority for Senior Executive Service Positions

On December 29, 1999, Deputy Attorney General (DAG) Eric Holder issued a memorandum entitled, "Delegation of Authority for Executive Resources." The memorandum attached a five page chart entitled "FBI-DEA Senior Executive Service Delegation of Authority," which addressed the respective authorities of the DAG and the FBI Director over members of the FBI Senior Executive Service (SES). Since 1999, the FBI has undergone major organizational changes and there have been additional changes to the system for compensating members of the SES. This memorandum updates the Holder delegation to reflect the changes in the FBI's organizational structure and the system under which SES members are compensated. These updates to the Holder memorandum are effective immediately.

All pages of the "FBI-DEA Senior Executive Service Delegation of Authority" chart remain in effect except as discussed below:

The description of Key FBI SES executives at the bottom of pages two - five is revised to read, "Includes the Deputy Director; the Associate Deputy Director, All Executive Assistant Deputy Directors, the General Counsel and any SES position which reports directly to the Director, FBI." For these positions, there should be no appointment or formal announcement of the selection until such time as I have reviewed and approved these actions. As is current policy, complete vetting information must accompany each request.

With regard to compensation (page three of the chart), I will retain the authority to approve initial pay and proposed pay adjustments that exceed 10 percent of an incumbent SES member's salary. I will continue to approve all retention allowances, and continue to review any and all dual compensation arrangements. Cases requesting pay actions and/or retention allowances must include full documentation to ensure that the incumbent's qualifications, experience, pay history, and job responsibilities support your request.

*KEY
FBI
executives*

-10 - Below

Memorandum for the Director, Federal Bureau of Investigation
Subject: Updated Delegation of Authority for Senior Executive
Service Positions

Page 2

Lastly, in terms of the approval process for all other non-key FBI SES positions, you retain authority to approve selections for these positions without Departmental approval. As is currently the case, this authority may not be redelegated, and all non-key SES selections must be reported to the Justice Management Division, Executive and Political Personnel, at least one pay period prior to the effective date.

Should you have any questions, please have your staff contact Mari Barr Santangelo, Deputy Assistant Attorney General for Human Resources and Administration, at 202-514-5501.

U.S. Department of Justice



Office of the Deputy Attorney General

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICGb6 -1
b7C -1

The Deputy Attorney General

Washington, D.C. 20530

December 29, 1999

MEMORANDUM

TO: Louis J. Freeh
Director
Federal Bureau of Investigation

FROM:  Eric H. Holder, Jr.

SUBJECT: Delegation of Authority for Executive Resources

Currently, there are a large number of actions affecting members of the statutory Senior Executive Service (SES) which require my approval as Chair of the Senior Executive Resources Board (SERB). In addition, there are a number of actions involving members of the Federal Bureau of Investigation and Drug Enforcement Administration (FBI-DEA) SES which cross my desk. While there are similarities between the two SES systems, the authorities delegated to the Heads of various Department Components for review and approval of executive personnel actions vary somewhat.

At the request of my predecessor, the Justice Management Division (JMD) conducted an analysis and review of the delegations of authority for the statutory and FBI-DEA SES. This review concentrated on two issues: 1) how best to streamline the process of taking actions and allow the SERB to focus our efforts on matters of greater added value; and 2) whether there should be a greater degree of consistency in my and the SERB's review of actions departmentwide.

Based on JMD's review and subsequent briefing, I have decided to delegate certain personnel functions in FBI-DEA SES.

Attached is a chart which identifies the specific executive personnel functions delegated and those retained by the Attorney General or me. As you will see, this delegation also responds to the issues you raised in your memorandum of November 27, 1998, concerning the staffing of Senior Level positions.

This delegation will be effective March 1, 2000. This delegation continues to provide you the ability to serve as a champion of change for the executive personnel program; develop innovative methods and procedures in executive resources management; exercise broad flexibility and control; improve timeliness of actions; reduce paperwork; and increase administrative efficiency.

Memorandum for Louis J. Freeh
Subject: Delegation of Authority for Executive Resources

Page 2

In order to ensure program integrity, I have asked JMD to host meetings during February 2000 to discuss and resolve any questions prior to the March 1, 2000, effective date. JMD will also provide management oversight for the delegated authority and identify those program indicators and actions/documents it needs to perform its oversight role. During and after the transition period, the JMD staff will be available to provide your component management advisory services, and guidance in the SES and Senior Level areas.

If you have any questions regarding this delegation of authority, please have a member of your staff contact Joanne W. Simms, Director of Personnel, on (202) 514-6788, or Valerie M. Willis, Assistant Director, Executive Resources Group on (202) 514-6794.

Attachment

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
<u>POSITION MANAGEMENT:</u> • Establishment/abolishment of Senior Executive Service (SES) positions • Abolishment of encumbered SES positions [i.e., reduction-in-force (RIF)]	<u>POSITION MANAGEMENT:</u> • Same • Same • Authority to refill established SL position	<u>POSITION MANAGEMENT:</u> • Authority to request allocation of Senior Executive Service spaces from the Office of Management and Budget • Authority to request allocation of Senior Level spaces from the Office of Personnel Management (OPM) • Authority to establish new Senior Level (SL) positions • Authority to abolish encumbered SL positions [i.e., reduction-in-force (RIF)]

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
<u>STAFFING:</u> • Establishment of qualifications standards • Establishment of Senior Executive Service Career Boards • Approval of SES and SL appointments (except those retained by the DAG) • Approval of SES and SL reassignments, reinstatements, transfers, and intradepartmental details (except those retained by the DAG) • Limited Term and Limited Emergency SES Appointments (except those retained by the DAG)	<u>STAFFING:</u> • Same • Same • Same • Same • Same	<u>STAFFING:</u> • Appointment and assignment of key FBI-DEA SES executives.

Key FBI SES executives:

Includes the General Counsel, all Assistant Directors, and any SES position which reports to the Director, FBI.

Key DEA SES executives:

Includes positions that report directly to the Administrator or Deputy Administrator, DEA (but not including the position of Special Agent in Charge)

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
<u>COMPENSATION:</u> • Initial pay setting up to ES-6 (except those retained by the DAG) • Pay adjustments up to ES-6 (except those retained by the DAG) • Alternative Work Schedules - Flexible or Compressed	<u>COMPENSATION:</u> • Same • Same • Initial pay setting and pay adjustments for SL positions up to SL-4 (except those retained by the DAG) • Recruitment and Relocation Bonuses • Same	<u>COMPENSATION:</u> • Initial pay setting and pay adjustments for key FBI-DEA SES executives • Retention allowances

Key FBI SES executives:

Includes the General Counsel, all Assistant Directors, and any SES position which reports to the Director, FBI.

Key DEA SES executives:

Includes positions that report directly to the Administrator or Deputy Administrator, DEA (but not including the position of Special Agent in Charge).

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
<u>PERFORMANCE MANAGEMENT</u> • SES and SL Superior Accomplishment Awards (except those retained by the DAG) • SES Recertification determinations • Performance appraisals • SES performance bonuses (except those retained by the DAG) • Appointment of Performance Review Boards • Performance-based reassignments (except those retained by the DAG)	<u>PERFORMANCE MANAGEMENT</u> • Same • Same • Same • Same • Same • Same	<u>PERFORMANCE MANAGEMENT</u> • SES and SL Superior Accomplishment Awards for key FBI-DEA SES executives • SES performance bonuses for key FBI-DEA SES executives • Presidential Rank Awards

Key FBI SES executives:

Includes the General Counsel, all Assistant Directors, and any SES position which reports to the Director, FBI.

Key DEA SES executives:

Includes positions that report directly to the Administrator or Deputy Administrator, DEA (but not including the position of Special Agent in Charge)

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
<u>ADVERSE ACTIONS:</u> • Suspension (except those retained by the DAG) • Removal (except those retained by the DAG)	<u>ADVERSE ACTIONS:</u> • Same • Same	<u>ADVERSE ACTIONS:</u> • Suspension or removal of key FBI-DEA SES executives and SL employees
<u>OTHER ACTIONS:</u>	<u>OTHER ACTIONS:</u>	<u>OTHER ACTIONS:</u> • Any other matter which, by law or regulation, requires the personal decision of the AG/DAG

Key FBI SES executives:

Includes the General Counsel, all Assistant Directors, and any SES position which reports to the Director, FBI.

Key DEA SES executives:

Includes positions that report directly to the Administrator or Deputy Administrator, DEA (but not including the position of Special Agent in Charge).

DD, ADD, EADs
Gen Counsel and any
SES which reports to Director.

Will, Candice M. (DO) (FBI)

From: Bowdich, David L. (DO) (FBI)
Sent: Monday, March 05, 2018 3:55 PM
To: Will, Candice M. (DO) (FBI)
Subject: RE: DD Bowdich

Thanks Candice, as you know we will be second guessed by some every step of the way however this ends up. As long as we follow the regular process we are where we should be on this issue.

Thanks,
Dave

From: Will, Candice M. (DO) (FBI)
Sent: Monday, March 05, 2018 2:30 PM
To: Bowdich, David L. (DO) (FBI) [redacted]
Subject: DD Bowdich
Importance: High

b6 -1
b7C -1
b7E -4

Dave,

I forgot to remind you about the DAG Memo, that the Dept has some ownership. I sent the DAG a short email advising that FBI OPR received the referral from the OIG, we are actively working it, we anticipate providing a proposed action to the subject this week, we will make the file available to the subject - all in accordance with standard procedures - for him to prepare a written response. In doing so, I let the Dept know that we are doing what should be done, not slow walking - we are following established procedures.

Candice

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

From: [redacted] (HRD) (FBI)
Sent: Monday, March 05, 2018 1:53 PM
To: Will, Candice M. (DO) (FBI) [redacted]
Subject: DD Bowdich
Importance: High

b6 -1
b7C -1
b7E -4

Hey Candice: Mr. Bowdich would like for you to call him. Could you please call [redacted] Thanks [redacted]

b6 -1
b7C -1
b7E -4

[redacted]
Human Resources Branch

b6 -1
b7C -1
b7E -4

263D-412-

-32

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Blier, William M.(OIG) <William.Blier@usdoj.gov>
Sent: Monday, March 05, 2018 11:44 AM
To: Will, Candice M. (DO) (FBI)
Subject: RE: Question

Candice,
Just getting out of a meeting, so I have not been able to respond until now. Sorry for the delay.

First, our ordinary practice is not to provide our final ROIs to investigative subjects. We provide the ROIs to the relevant DOJ component for the component to use and handle in its disciplinary process according to its policies. We do not know of any instance in which OIG has provided a final report to a subject at or near the time of our referral to the component. Subjects sometimes make FOIA requests for ROIs. We process such requests in the ordinary course. I don't think that would happen before your proposed action. I think you are aware that we do permit subjects to review draft reports and provide comments on the draft and a summary in matters that meet our protocol for public posting.

As for your second request, we defer to your determination of how to handle disclosure of our report or the supporting materials in your disciplinary process, but if your determination is that providing the final OIG report before your proposed action would give the subject more time to respond and thereby contribute to the due process the subject receives in your proceedings, we have no objection and would be supportive of your doing so.

Lastly, I would like to address separately the question regarding the Durham matter. I will send another email about it.

Let me know if you have any other questions.

Thanks. Bill

From: Will, Candice M. (DO) (FBI) [mailto:[REDACTED]]
Sent: Monday, March 05, 2018 10:45 AM
To: Blier, William M.(OIG) <wblier@OIG.USDOJ.GOV>
Subject: RE: Question

b6 -1
b7C -1
b7E -4

Bill,

Upon further reflection, even if I were to grant Michael Bromwich early access to your report, it does not serve his stated purpose. He still could not speak publicly about it because the FBI's NDA, which we would require him to execute if he is to represent our employee in our pending matter, prevents him from speaking out about the pending matter. Nevertheless, I would like to know if you have shared your final reports with other subjects at/near the time you referred to us, and whether you have a reaction one way or the other. Thank you.

Candice

From: Will, Candice M. (DO) (FBI)
Sent: Monday, March 05, 2018 10:00 AM
To: Blier, William M.(OIG) <William.Blier@usdoj.gov>
Subject: Question

Bill,

263D-HQ [REDACTED] 33

b6 -1
b7C -1

Couple of things:

1) Michael Bromwich just called seeking input on FBI OPR's process. I advised him, as I advised his client on his last day, that we review the IG's materials, prepare our own report and proposed action, and notify the subject employee that he and his counsel may review our file and prepare a written response (review to be conducted after MB has executed the FBI's NDA). Michael asked when he could see the IG's final report. I advised that FBI OPR's normal process does not allow for an employee's review of our materials (including the IG's report) until we have issued our proposed action. He indicated that the OIG NDA he signed effectively prevents him from speaking out on his client's behalf because: (a) he is barred from speaking about the draft report until the final report is issued to the FBI (which happened last Wed night); and (b) he may not address any aspect of the draft report that conflicts with the final report, which he cannot know without access to the final report. I asked him to send me the OIG's NDA and agreed with would speak again later, while noting that we have adjudicated many cases involving IG reports and I cannot recall any where we made the IG's report available to the employee in advance of the normal process (i.e., our proposed action). Before speaking further with Michael, I wanted to check with you as to whether:

- a) Your office has previously provided your final report to a subject at/near the same time that you referred the matter to FBI OPR.
- b) Whether the OIG has any objection to Bromwich receiving the report prior to the issuance of our proposed action (we are aiming for this week). I am not sure I will agree to this, but it would allow counsel additional time to prepare for what is to come.

2) John Durham advised that the DAG's office said FBI OPR may proceed on its consideration of the matter he investigated. I will send the attorney on my staff who is assigned to that matter over to the Postal Service SCIF later this week to begin his review of the materials so that we may move that matter forward.

Candice

Will, Candice M. (DO) (FBI)

From: Bromwich, Michael R. [redacted]
Sent: Monday, March 05, 2018 9:09 AM
To: Will, Candice M. (DO) (FBI)
Cc: Michael R. Bromwich
Subject: Fwd: Your NDA
Attachments: Scanned from a Xerox Multifunction Device.pdf; ATT00001.htm

b6 -3
b7C -3

Attached is the NDA we discussed. I look forward to speaking with you further about this.

MRB

Begin forwarded message:

From: "Beckhard, Dan C. (OIG)" <Dan.C.Beckhard@usdoj.gov<mailto:Dan.C.Beckhard@usdoj.gov>>
Date: March 1, 2018 at 9:19:38 AM EST

To: [redacted]

b6 -3
b7C -3

Subject: Your NDA

b6 -1
b7C -1

263D-XQ-[redacted]-34

**NON-DISCLOSURE AGREEMENT
OFFICE OF THE INSPECTOR GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

I, Michael Bromwich, Attorney for Andrew McCabe, understand that the Department of Justice Office of the Inspector General (OIG) has asked my client to review its Draft Report entitled "A Report of Investigation of Certain Allegations Relating to Former Deputy Director Andrew McCabe" so that he is able to provide comments to the OIG to ensure the accuracy of the OIG's Final Report.

I agree that until the OIG's Final Report is released to the FBI, I will not discuss or disclose any information from or about the Draft Report, or later versions of the Draft Report, to anyone other than the OIG or my client, Andrew McCabe, after he executes a non-disclosure agreement with terms similar to this agreement, or otherwise as permitted by law, the Constitution, court order, or subpoena. I further agree that even after the OIG's Final Report is released to the FBI, I will not discuss or disclose any information from or about the Draft Report, or later versions of the Draft Report, that is not contained in or is redacted from the Final Report. I understand that I could be subject to appropriate action for breaching the terms of this agreement.

I may, however, disclose such information to members and employees of my law firm or office pursuant to my legal responsibilities in this matter, but only based upon a need to know and provided that all persons who receive this information first shall be shown a copy of this nondisclosure agreement and agree in writing to be bound by it.

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive order and statutory provisions are incorporated into this agreement and are controlling.



(Signature)

2/26/18

(Date)

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Tuesday, March 06, 2018 12:44 PM
To: 'Bromwich, Michael R.'; [REDACTED]
Cc: [REDACTED]
Subject: FBI NDAs
Attachments: Attorney Nondisclosure Agreement.pdf; Employee Nondisclosure Agreement.pdf

b6 -3
b7C -3

Dear Mr. Bromwich and Mr. Bruce,

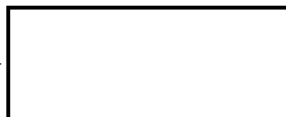
Attached please find two nondisclosure agreements, one for you to execute and one for your client to execute. Please return them to me at your earliest convenience. Thank you.

Candice M. Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
1025 F Street, Suite 410
Washington, DC 20004

[REDACTED] (office)
[REDACTED] (cell)

b6 -1
b7C -1
b7E -4

263D-HQ-



35

b6 -1
b7C -1



NONDISCLOSURE AGREEMENT

I, _____, an attorney licensed to practice in the state of _____

(Name of Attorney)

_____, as consideration for being granted access to certain FBI-related _____

(State)

information in connection with my legal representation of Federal Bureau of Investigation (FBI) employee,

_____, as to Administrative Inquiry.

(Name of Employee)

263-HQ- _____, agree as follows:

(File Number from Notification Form)

I will not disclose orally, in writing, or by any other means, to any party other than the Director, FBI; Internal Investigations Section/Inspection Division, FBI; the Office of Professional Responsibility (OPR), FBI; the Office of the General Counsel, FBI; the United States Attorney General; the Office of the Inspector General, Department of Justice (DOJ); OPR, DOJ; or otherwise as required by law, court order, or subpoena (and then under seal to the extent permitted by law) - **without the prior written authorization of the FBI** - any information or material derived from or relating to FBI files or any other FBI-related information acquired by virtue of my legal representation of this matter.

I may, however, disclose such information to members and employees of my law firm or office pursuant to my legal responsibilities in this matter, but only based upon a need to know and provided that all persons who receive this information first shall be shown a copy of this nondisclosure agreement and, in a written and signed Certificate such as that annexed hereto, state that he or she has read this nondisclosure agreement and agrees to be bound by the terms thereof. I agree to retain such certificates until the conclusion of this matter and shall make such certificates available to the FBI upon request.

I further agree that all documents released by the FBI in this matter remain the property of the FBI and that, upon the conclusion of this matter or at the FBI's earlier request, I will return all such documents and any copies of them to the FBI.

I acknowledge that the unauthorized disclosure of the aforementioned information would violate this agreement, might additionally violate federal law, regulations or policy, and could form the basis for legal action.

(Signature of Attorney)

(Date)



CERTIFICATE

I, _____, acknowledge that I have reviewed the
(Printed Name)
Nondisclosure Agreement between the Federal Bureau of Investigation and _____,
(Name of Primary Attorney)
executed on _____, and agree to be bound by the terms thereof.
(Date of Agreement)

(Signature)

(Today's Date)



FBI DISCIPLINARY PROCESS: DISCLOSURE OF INFORMATION TO ATTORNEYS

The FBI recognizes that, for you to receive effective assistance of counsel during an administrative inquiry, it may be necessary for you to disclose to your attorney information or materials derived from FBI files or obtained by virtue of your employment with the Bureau. Because much FBI information is by its nature very sensitive, the FBI and its employees have an obligation to protect that information from unauthorized disclosure to persons outside the FBI, even to attorneys representing FBI employees.

You are therefore reminded that, during the course of this process, you continue to be bound by federal laws and regulations prohibiting the unauthorized disclosure of FBI information and by the terms of the agreement you signed when you became an FBI employee in which you agreed never to divulge, publish, reveal or otherwise disclose any information or material from or relating to FBI files or any other information acquired by virtue of your official employment, duties, or status, without the written permission of the Director.

The following is a list of the types of FBI information you may not disclose to your attorney without prior authorization and the procedures you should use to obtain the necessary authorization to release the information to your attorney.

1. Classified information, whether marked or unmarked, whether written or oral, that is classified pursuant to the provisions of the Executive Order 12958.
2. Information protected from disclosure by the Privacy Act, which includes information in FBI files retrievable by an individual's name or other identifying data, including information pertaining to other FBI employees.
3. Information that reveals sensitive law enforcement, intelligence, or counterintelligence techniques, sources or methods; or that reveals the sensitive, confidential or proprietary techniques, sources, or methods of other agencies or government entities.
4. Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure.
5. Information that would reveal the identity of a confidential source or informant.
6. Information that relates to any sensitive operational details or the substantive merits of any ongoing or open investigation, inquest, probe, prosecution, appeal or case.
7. Information consisting of the proprietary information of another entity, including trade secrets.
8. Information pertaining to wiretaps or intercepts protected or regulated by Title III (18 U.S.C. §§ 2510-2520).
9. Information pertaining to currency transaction reports regulated or protected by 31 U.S.C. §§ 5311-5319.
10. Tax return information regulated or protected by 26 U.S.C. § 6103.
11. Information, the disclosure of which is prohibited by any other Federal statute or regulation.
12. Information, the disclosure of which would divulge opinions, recommendations, and advice generated in the decision-making process of the federal government.

Will, Candice M. (DO) (FBI)

From: Bromwich, Michael R. [REDACTED]
Sent: Tuesday, March 06, 2018 10:47 AM
To: Will, Candice M. (DO) (FBI)
Cc: [REDACTED]
Subject: Re: Your NDA

b6 -3
b7C -3

Candice,

Understood. Thanks for your detailed response. You have my contact information. Please contact me and Eric Bruce at [REDACTED] when you have anything further.

b6 -3
b7C -3

Best.

MRB

On Mar 5, 2018, at 4:14 PM, Will, Candice M. (DO) (FBI) [REDACTED] > wrote:

b6 -1
b7C -1
b7E -4

Dear Mr. Bromwich,

Thank you for forwarding the NDA you executed with the OIG.

You and your client will be granted access to the FBI's file to review, including the OIG's final report, after FBI OPR has issued its proposed action in this matter and you have signed the FBI's NDA. We do not grant access to the FBI's file until we have issued our proposed action. Even were we to make an exception in this case, which would result in complaints of preferential treatment, it would not achieve your intended objective of being able to address the findings made against your client (assuming I understood you correctly) because you would have to execute the FBI's NDA before we would grant you access to our materials and that would prohibit you from speaking publicly about the matter. I am sorry that I do not have better news for you, but that is our process.

Candice

Candice M. Will

Assistant Director

Office of Professional Responsibility

Federal Bureau of Investigation

1025 F Street, Suite 410

Washington, DC 20004

[REDACTED]
[REDACTED]
b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

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

From: Bromwich, Michael R. [REDACTED]

Sent: Monday, March 05, 2018 9:09 AM

To: Will, Candice M. (DO) (FBI) [REDACTED]

Cc: Michael R. Bromwich [REDACTED]

Subject: Fwd: Your NDA

b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

Attached is the NDA we discussed. I look forward to speaking with you further about this.

MRB

Begin forwarded message:

From: "Beckhard, Dan C. (OIG)"

<Dan.C.Beckhard@usdoj.gov<mailto:Dan.C.Beckhard@usdoj.gov><mailto:Dan.C.Beckhard@usdoj.gov>>

Date: March 1, 2018 at 9:19:38 AM EST

To:

[REDACTED] b6 -3
b7C -3

Subject: Your NDA

If you believe that your attorney will require access to classified information to assist you in this matter, you must first contact the Internal Investigations Section for guidance in securing the appropriate security clearance for your attorney. Classified information may not be disclosed either orally or in documentary form unless and until your attorney has received a security clearance from the Department of Justice. If your attorney has an appropriate security clearance, he or she will be permitted to review classified documents only in FBI workspace so as to ensure that classified documents are not compromised. All oral communications with your attorney regarding classified information must take place in person in FBI workspace with appropriate safeguards.

If you believe that your attorney will require access to any information other than classified information that is derived from FBI files or obtained by virtue of your employment, you must request from the Internal Investigations Section in writing, authority to disclose such information, whether you are seeking to disclose the information orally or in document form. Your request should specify the nature of the information and its location in FBI files, if known, and should state the reason why you believe it is necessary to disclose the information. The decision on whether disclosure will be authorized will be based upon the nature of the information requested and your need for it. If the Internal Investigations Section consents to the disclosure, your attorney will be required first to sign the attached agreement not to disclose the information further.

You should sign this form and submit it to the Division Head or his/her designee for transmittal to Internal Investigations Section/Inspection Division, Room 11865, FBIHQ. The division will retain a copy for its records.

I have read the above information regarding the restrictions on disclosing FBI information to my attorney. I understand that I am bound by the restrictions set forth in this notice.

Employee's Signature

Date

Printed Name

263-HQ-

File Number (from bottom of Notification Form)

Name, Address and Telephone Number of Attorney

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 07, 2018 11:37 AM
To: Rosenstein, Rod (ODAG) (JMD)
Cc: Hur, Robert (ODAG) (JMD)
Subject: RE: IG Report

DAG Rosenstein:

We have completed our proposed action and are delivering it to your office to the attention of Rob Hur. We are also overnighting a copy to Mr. McCabe and his attorneys once we receive their signed non-disclosure agreements. As indicated below, the Department has final decision-making authority in this matter.

Candice Will

From: Will, Candice M. (DO) (FBI)
Sent: Monday, March 05, 2018 12:10 PM
To: Rosenstein, Rod (ODAG) (JMD) [REDACTED]
Subject: IG Report

b6 Per DOJ/OIP

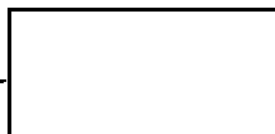
DAG Rosenstein:

FBI OPR received the IG's "Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe" on February 28. We have completed our review of the Report and underlying investigative materials and we are in the process of preparing our proposed action. When we complete our proposed action, we will provide it to you and, pursuant to FBI procedure, to Mr. McCabe. Upon the execution of his attorney's non-disclosure agreement, we will also provide a copy of our proposed action to Mr. McCabe's attorney, Michael Bromwich. Thereafter, Mr. McCabe and Mr. Bromwich may review our file and prepare a written response to the proposed action. Pursuant to the DAG's May 27, 2008 Memo to the FBI Director (copy attached), the Department has retained final decision-making authority over adverse actions impacting the Deputy Director. Our proposed action will be adverse, therefore the Department will have final decision-making authority. In the normal course, once an FBI employee has provided his/her written response to FBI OPR's proposed action, FBI OPR would schedule an oral hearing. We will do so in this case subject to your approval. Thank you.

Candice Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
[REDACTED]

b6 -1
b7C -1
b7E -4

263D-HQ-



36

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Hur, Robert (ODAG) <Robert.Hur@usdoj.gov>
Sent: Wednesday, March 07, 2018 8:48 AM
To: Will, Candice M. (DO) (FBI)
Subject: Re: RE: RE:

4208. Thanks!

Sent from my iPhone

On Mar 7, 2018, at 8:37 AM, Will, Candice M. (DO) (FBI) [REDACTED] wrote:

b6 -1
b7C -1
b7E -4

Rob - May I have your room number at Main Justice to ensure the package is delivered straight to you? Thank you.

From: Hur, Robert (ODAG) [mailto:Robert.Hur@usdoj.gov]
Sent: Wednesday, March 07, 2018 8:28 AM
To: Will, Candice M. (DO) (FBI) [REDACTED]
Subject: Re: RE:

b6 -1
b7C -1
b7E -4

Thanks Candice - I look forward to reviewing and will circle back with you afterward to discuss.

Sent from my iPhone

On Mar 7, 2018, at 7:53 AM, Will, Candice M. (DO) (FBI) [REDACTED] wrote:

b6 -1
b7C -1
b7E -4

Not at all. Alternatively, as we will be delivering a package to the DAG's attention this morning, once you (or whomever) has had an opportunity to review it, if you have any questions, I would of course be happy to answer them. I reached out to you because you were generally described to me as the DAG's right hand on such matters.

From: Hur, Robert (ODAG) [mailto:Robert.Hur@usdoj.gov]
Sent: Wednesday, March 07, 2018 7:46 AM
To: Will, Candice M. (DO) (FBI) [REDACTED]
Cc: Simms, Donna Y. (ODAG) (JMD) <Donna.Y.Simms@usdoj.gov>; Brown, Angela M. (ODAG) (JMD) <Angela.M.Brown@usdoj.gov>
Subject: Re:

b6 -1
b7C -1
b7E -4

Hi Candice,

This morning is pretty packed for me. Would you mind working with Donna and Angie to find a time this afternoon?

Thanks,
Rob

Sent from my iPhone

On Mar 7, 2018, at 7:29 AM, Will, Candice M. (DO) (FBI) [REDACTED] wrote:

b6 -1
b7C -1
b7E -4

Mr. Hur,

Do you have a few minutes this morning for me to speak with you by telephone about a matter being forwarded to the DAG?

Candice Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation

b6 -1
b7C -1
b7E -4



Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 07, 2018 7:28 AM
To: Hur, Robert (ODAG) (JMD)

Mr. Hur,

Do you have a few minutes this morning for me to speak with you by telephone about a matter being forwarded to the DAG?

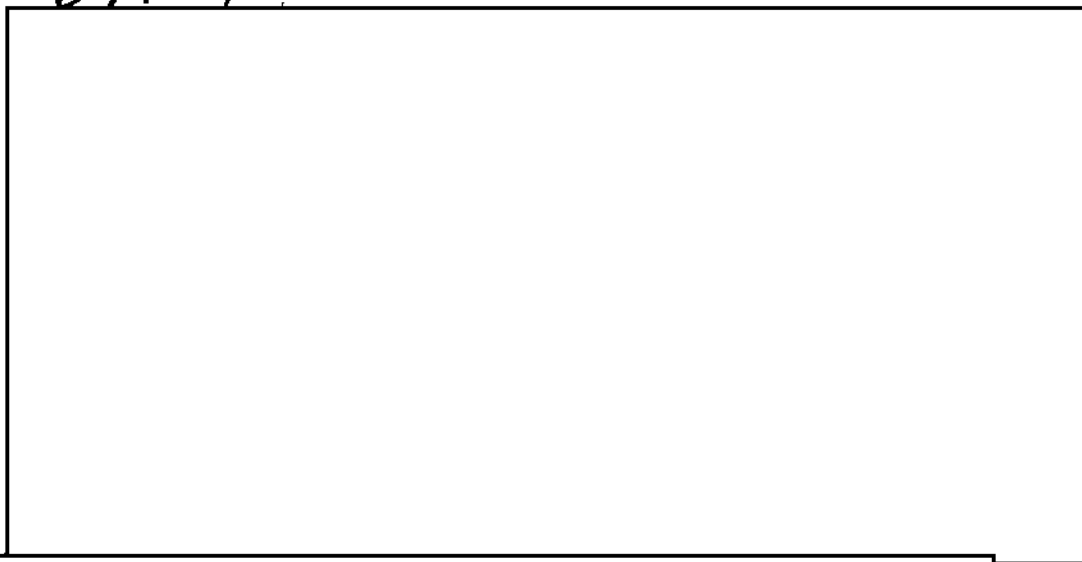
Candice Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
[REDACTED]

b6 -1
b7C -1
b7E -4

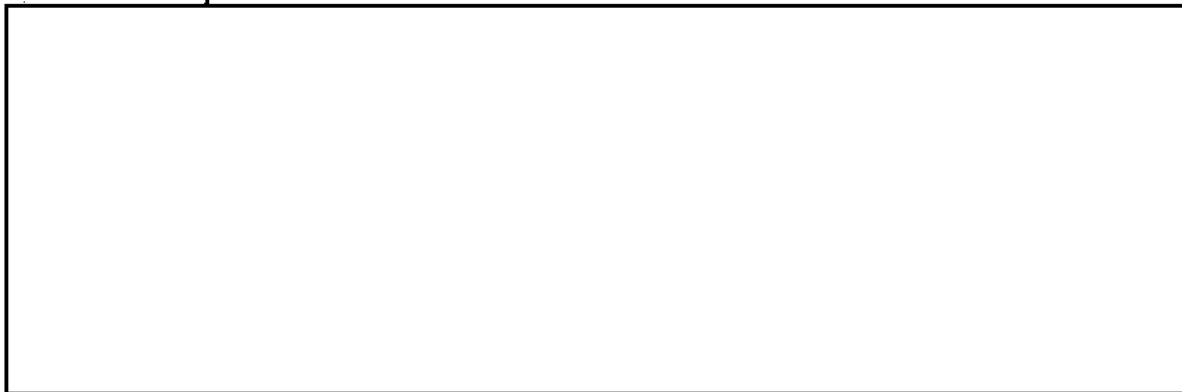
3/7/18

Teleph call w/ Robtun:
DAB / Scott Schoody - he met w/ them

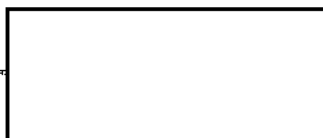
b5 Per DOJ/OIP



b5 Per DOJ/OIP



2123-110



37

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

Subject: Sensitive Matter
Location: Conference Call to 202-514-2105 from [REDACTED] (cell) b6 Per DOJ/OIP
Start: Wed 3/7/2018 6:30 PM
End: Wed 3/7/2018 6:45 PM
Show Time As: Tentative
Recurrence: (none)
Organizer: Hur, Robert (ODAG)

POC: Angela Brown

Attendees: Candace Will and Robert Hur

Note: This meeting is limited to the invited attendees only. You are not authorized to forward this invitation. If you believe other individuals should be included, please contact the ODAG Front Office.

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 6:27 PM
To: Bromwich, Michael R.
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re: RE: Re:

b6 -3
b7C -3

Michael and Eric,

Please be advised that FBI policy prohibits you from bringing a laptop into our space and also does not permit photocopying or photographing of FBI files, including 263 (disciplinary) files. I mention it to avoid any bumps in the road tomorrow morning. See you then.

Candice

b6 -3
b7C -3

----- Original message -----

From: "Bromwich, Michael R." [REDACTED]
Date: 3/8/18 5:36 PM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" <[REDACTED]>
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re: RE: Re:

b6 -1
b7C -1
b7E -4b6 -3
b7C -3

Candice, both Eric and I have pre-existing commitments in the early morning. We will be there around 11 am. Ask for you?

Scott, I will call you shortly.

MRB

On Mar 8, 2018, at 10:41 AM, Will, Candice M. (DO) (FBI) <[REDACTED]> wrote:

b6 -1
b7C -1
b7E -4

6am - 7pm tomorrow and Mon. If you need other hours, Michael, let me know and I'll see what I can do.

----- Original message -----

From: "Bromwich, Michael R." [REDACTED]
Date: 3/8/18 10:29 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" <[REDACTED]>
Cc: [REDACTED], "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>> "Michael R. Bromwich" [REDACTED]
Subject: Re: RE: Re:

b6 -3
b7C -3
b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

Candice, until what time will the materials be available tomorrow? And then resuming Monday morning? I have other commitments and I'm sure Eric does too, and as you know we didn't know the timing of this until last night.

263D-HQ-

38

b6 -1
b7C -1

FBI 18-cv-01766-1503

MRB

On Mar 8, 2018, at 10:16 AM, Will, Candice M. (DO) (FBI)

> wrote:

b6 -1
b7C -1
b7E -4

File review can begin anytime you like tomorrow. I am in early on Fridays.

----- Original message -----

From: "Will, Candice M. (DO) (FBI)"

Date: 3/8/18 10:14 AM (GMT-05:00)

To: [REDACTED], "Bromwich, Michael R."

[REDACTED]

Cc: "Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>, "Michael R. Bromwich"

[REDACTED]

Subject: Re: RE: Re:

Michael:

As noted in a prior email, the package was not delivered. We're good there.

We are delivering our packages to you now at the addresses you both have approved. At your request, your package, Michael, will include a separate envelope marked for your client. (With rare exception, we do not transmit our materials electronically.)

The file will be available at our offices: The Woodies Bldg, 1025 F Street NW, Suite 410, Wash DC 20004.

Candice

----- Original message -----

From: [REDACTED]

Date: 3/8/18 10:02 AM (GMT-05:00)

To: "Bromwich, Michael R."

[REDACTED]

Cc: "Will, Candice M. (DO) (FBI)" <[REDACTED]>, "Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>, "Michael R. Bromwich"

[REDACTED]

Subject: Re: RE: Re:

My address is correct, thank you.

b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

b6 -3
b7C -3

b6 -3
b7C -3

b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

Eric

Eric B. Bruce

[redacted] (Washington DC)
[redacted] (New York)

b6 -3
b7C -3

KOBRE & KIM LLP

www.kobrekim.com<<http://www.kobrekim.com>><<http://www.kobrekim.com>><<http://www.kobrekim.com>>

New York | London | Hong Kong | Washington, DC | Miami | Cayman Islands | BVI

On Mar 8, 2018, at 9:58 AM, Bromwich, Michael R

[redacted] wrote:

b6 -3
b7C -3

Candice:

As to #2, yes, that's our preference for retrieving the package so it doesn't fall into the wrong hands.

As to #3, if it's this morning before noon, the Bromwich Group address. I'll leave word at the reception desk at 1776 K Street. If it's not until this afternoon, the Robbins Russell address. Eric can confirm whether the address you have for him is correct. Please either include a copy of our client's letter in the package you deliver to us, or send it to us electronically.

As to #4, when and where will the materials be made available?

Thank you.

MRB

From: Will, Candice M. (DO) (FBI) [mailto:[redacted]]

Sent: Thursday, March 08, 2018 9:13 AM

To: Bromwich, Michael R.

Cc:

b6 -1
b7C -1
b7E -4

[redacted] Schools, Scott (ODAG) (JMD); Michael R. Bromwich

Subject: Re:

b6 -3
b7C -3

Michael:

1. Thank you.

2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036, [redacted] and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.

b6 -3
b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'y 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R."

[REDACTED] b6 -3
[REDACTED] b7C -3

Date: 3/8/18 8:31 AM (GMT-05:00)

To: "Will, Candice M. (DO) (FBI)"

[REDACTED] b6 -1
[REDACTED] b7C -1
Cc: [REDACTED] b7E -4

[REDACTED] b6 -3
[REDACTED] b7C -3

"Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

[REDACTED] b6 -3
[REDACTED] b7C -3

Subject: Re:

Candice:

1. Attached is my executed NDA.

2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.

3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.

4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.

5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.

6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.

7. We will be in touch with Scott Schools later today.

Thank you.

MRB

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Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 5:42 PM b6 -3
To: Bromwich, Michael R. b7C -3
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re: RE: Re:

Michael,

I will need to meet you in the lobby because our elevators require cardkeys for access. I can either be in the lobby at 11 am or await your call at [REDACTED] Your call.

b6 -1
b7C -1
b7E -4

Candice

----- Original message -----

From: "Bromwich, Michael R." <[REDACTED]> b6 -3
Date: 3/8/18 5:36 PM (GMT-05:00) b7C -3
To: "Will, Candice M. (DO) (FBI)" <[REDACTED]> b6 -1
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" <[REDACTED]> b7C -1
Subject: Re: RE: Re:

b6 -3
b7C -3

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Scott, I will call you shortly.

MRB

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b6 -3
b7C -3

6am - 7pm tomorrow and Mon. If you need other hours, Michael, let me know and I'll see what I can do.

----- Original message -----

From: "Bromwich, Michael R." <[REDACTED]> b6 -3
Date: 3/8/18 10:29 AM (GMT-05:00) b7C -3
To: "Will, Candice M. (DO) (FBI)" <[REDACTED]> b6 -1
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" <[REDACTED]> b7C -1
Subject: Re: RE: Re: b7E -4
b6 -3
b7C -3

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MRB

On Mar 8, 2018, at 10:16 AM, Will, Candice M. (DO) (FBI)

[REDACTED] > wrote:

File review can begin anytime you like tomorrow. I am in early on Fridays.

b6 -1
b7C -1
b7E -4

----- Original message -----

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Date: 3/8/18 10:14 AM (GMT-05:00)

To: [REDACTED] "Bromwich, Michael R."

b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

Cc: "Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

Subject: Re: RE: Re:

b6 -3
b7C -3

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We are delivering our packages to you now at the addresses you both have approved. At your request, your package, Michael, will include a separate envelope marked for your client. (With rare exception, we do not transmit our materials electronically.)

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Candice

----- Original message -----

From: [REDACTED]

Date: 3/8/18 10:02 AM (GMT-05:00)

To: "Bromwich, Michael R."

b6 -3
b7C -3

Cc: "Will, Candice M. (DO) (FBI)"

Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

b6 -1
b7C -1
b7E -4

Subject: Re: RE: Re:

b6 -3
b7C -3

My address is correct, thank you.

Eric

Eric B. Bruce

[redacted] (Washington DC) b6 -3
[redacted] (New York) b7C -3

KOBRE & KIM LLP

www.kobrekim.com<<http://www.kobrekim.com>><<http://www.kobrekim.com>><<http://www.kobrekim.com>>

New York | London | Hong Kong | Washington, DC | Miami | Cayman Islands | BVI

On Mar 8, 2018, at 9:58 AM, Bromwich, Michael R.

[redacted] b6 -3
[redacted] wrote: b7C -3

Candice:

As to #2, yes, that's our preference for retrieving the package so it doesn't fall into the wrong hands.

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As to #4, when and where will the materials be made available?

Thank you.

MRB

From: Will, Candice M. (DO) (FBI) [mailto:[redacted]] b6 -1
Sent: Thursday, March 08, 2018 9:13 AM b7C -1
To: Bromwich, Michael R. b7E -4
Cc:

[redacted] b6 -3
[redacted] b7C -3

[redacted] Schools, Scott (ODAG) (JMD); Michael R. Bromwich

Subject: Re:

Michael:

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b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'ly 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single

letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R."

Date: 3/8/18 8:31 AM (GMT-05:00)

To: "Will, Candice M. (DO) (FBI)"

Cc:

"Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

Subject: Re:

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Will, Candice M. (DO) (FBI)

From: Bromwich, Michael R. [REDACTED] b6 -3
Sent: Thursday, March 08, 2018 5:37 PM b7C -3
To: Will, Candice M. (DO) (FBI)
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re: RE: Re:

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Scott, I will call you shortly.

MRB

On Mar 8, 2018, at 10:41 AM, Will, Candice M. (DO) (FBI) [REDACTED] wrote:

b6 -1
b7C -1
b7E -4

6am - 7pm tomorrow and Mon. If you need other hours, Michael, let me know and I'll see what I can do.

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From: "Bromwich, Michael R." [REDACTED] b6 -3
Date: 3/8/18 10:29 AM (GMT-05:00) b7C -3
To: "Will, Candice M. (DO) (FBI)" [REDACTED] b6 -1
Cc: [REDACTED] b7C -1
[REDACTED] "Schools, Scott (ODAG) (JMD)" b7E -4
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>> "Michael R. Bromwich" b6 -3
[REDACTED] b7C -3
Subject: Re: RE: Re:

Candice, until what time will the materials be available tomorrow? And then resuming Monday morning? I have other commitments and I'm sure Eric does too, and as you know we didn't know the timing of this until last night.

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[REDACTED] b7C -1
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b7C -1
b7E -4

Date: 3/8/18 10:14 AM (GMT-05:00)

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b6 -3
b7C -3

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<Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

b6 -3
b7C -3

Subject: Re: RE: Re:

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b6 -3
b7C -3

Cc: "Will, Candice M. (DO) (FBI)" [REDACTED], "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

b6 -1
b7C -1
b7E -4

Subject: Re: RE: Re:

My address is correct, thank you.

Eric

Eric B. Bruce

(Washington DC)
(New York)

b6 -3
b7C -3

KOBRE & KIM LLP

www.kobrekim.com<http://www.kobrekim.com><http://www.kobrekim.com><http://www.kobrekim.com>

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[REDACTED]
[REDACTED] wrote:

b6 -3
b7C -3

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b6 -1
b7C -1
b7E -4

Sent: Thursday, March 08, 2018 9:13 AM

To: Bromwich, Michael R.

b6 -3
b7C -3

Cc:

[REDACTED]
[REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich

Subject: Re:

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b6 -3
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b6 -1

b7C -1

b7E -4

Cc:

b6 -3

b7C -3

"Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

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b6 -3

b7C -3

Candice:

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Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
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Date: 3/8/18 10:29 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [REDACTED]
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re: RE: Re:

b6 -3
b7C -3
b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

Candice, until what time will the materials be available tomorrow? And then resuming Monday morning? I have other commitments and I'm sure Eric does too, and as you know we didn't know the timing of this until last night.

MRB

On Mar 8, 2018, at 10:16 AM, Will, Candice M. (DO) (FBI) [REDACTED] > wrote:

b6 -1
b7C -1
b7E -4

File review can begin anytime you like tomorrow. I am in early on Fridays.

----- Original message -----

From: "Will, Candice M. (DO) (FBI)" [REDACTED] >
Date: 3/8/18 10:14 AM (GMT-05:00)
To: [REDACTED] "Bromwich, Michael R." [REDACTED]
Cc: "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich" [REDACTED]
Subject: Re: RE: Re:

b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

b6 -3
b7C -3

Michael:

As noted in a prior email, the package was not delivered. We're good there.

We are delivering our packages to you now at the addresses you both have approved. At your request, your package, Michael, will include a separate envelope marked for your client. (With rare exception, we do not transmit our materials

electronically.)

The file will be available at our offices: The Woodies Bldg, 1025 F Street NW, Suite 410, Wash DC 20004.

Candice

----- Original message -----

From: [REDACTED] b6 -3
Date: 3/8/18 10:02 AM (GMT-05:00) b7C -3
To: "Bromwich, Michael R." [REDACTED]
Cc: "Will, Candice M. (DO) (FBI)" [REDACTED] "Schools, Scott (ODAG) (JMD)"
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"
[REDACTED]>> b6 -3
Subject: Re: RE: Re: b7C -3

b6 -1
b7C -1
b7E -4

My address is correct, thank you.

Eric

Eric B. Bruce

[REDACTED] (Washington DC) b6 -3
(New York) b7C -3

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On Mar 8, 2018, at 9:58 AM, Bromwich, Michael R.

[REDACTED] wrote. b6 -3
b7C -3

Candice:

As to #2, yes, that's our preference for retrieving the package so it doesn't fall into the wrong hands.

As to #3, if it's this morning before noon, the Bromwich Group address. I'll leave word at the reception desk at 1776 K Street. If it's not until this afternoon, the Robbins Russell address. Eric can confirm whether the address you have for him is correct. Please either include a copy of our client's letter in the package you deliver to us, or send it to us electronically.

As to #4, when and where will the materials be made available?

Thank you.

MRB

From: Will, Candice M. (DO) (FBI) [mailto:[REDACTED]] b6 -1
Sent: Thursday, March 08, 2018 9:13 AM b7C -1
To: Bromwich, Michael R. b7E -4
Cc: [REDACTED] Schools, Scott
(ODAG) (JMD); Michael R. Bromwich

b6 -3
b7C -3

Subject: Re:

Michael:

1. Thank you.
2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036, [REDACTED] and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.

b6 -3
b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'ly 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R."

b6 -3
b7C -3

Date: 3/8/18 8:31 AM (GMT-05:00)

To: "Will, Candice M. (DO) (FBI)" [REDACTED]

b6 -1
b7C -1

Cc: [REDACTED]
Scott (UDAG) (JMD)"

"Schools, b7E -4

<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"

b6 -3
b7C -3

[REDACTED]
Subject: Re:

b6 -3
b7C -3

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.

4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.

5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.

6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.

7. We will be in touch with Scott Schools later today.

Thank you.

MRB

This e-mail message is from Kobre & Kim LLP, a law firm, and may contain legally privileged and/or confidential information. If the reader of this message is not the intended recipient(s), or the employee or agent responsible for delivering the message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete this e-mail message and any attachments from your computer without retaining a copy.

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 10:17 AM b6 -3
To: [REDACTED] Bromwich, Michael R. b7C -3
Cc: Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re: RE: Re:

File review can begin anytime you like tomorrow. I am in early on Fridays.

----- Original message -----
From: "Will, Candice M. (DO) (FBI)" <[REDACTED]> b6 -1
Date: 3/8/18 10:14 AM (GMT-05:00) b7C -1
To: [REDACTED] "Bromwich, Michael R." [REDACTED] b7E -4
Cc: "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich"
[REDACTED]
Subject: Re: RE: Re: b6 -3
b7C -3

Michael:

As noted in a prior email, the package was not delivered. We're good there.

We are delivering our packages to you now at the addresses you both have approved. At your request, your package, Michael, will include a separate envelope marked for your client. (With rare exception, we do not transmit our materials electronically.)

The file will be available at our offices: The Woodies Bldg, 1025 F Street NW, Suite 410, Wash DC 20004.

Candice

----- Original message -----
From: [REDACTED] b6 -3
Date: 3/8/18 10:02 AM (GMT-05:00) b7C -3
To: "Bromwich, Michael R." <[REDACTED]> b6 -1
Cc: "Will, Candice M. (DO) (FBI)" <[REDACTED]>, "Schools, Scott (ODAG) (JMD)" b7C -1
<Scott.Schools@usdoj.gov>, "Michael R. Bromwich" <[REDACTED]> b7E -4
Subject: Re: RE: Re: b6 -3
b7C -3

My address is correct, thank you.

Eric

Eric B. Bruce

b6 -3

b7C -3

(Washington DC)

(New York)

KOBRE & KIM LLP

www.kobrekim.com<<http://www.kobrekim.com>>

New York | London | Hong Kong | Washington, DC | Miami | Cayman Islands | BVI

On Mar 8, 2018, at 9:58 AM, Bromwich, Michael R.

b6 -3

b7C -3

> wrote:

Candice:

As to #2, yes, that's our preference for retrieving the package so it doesn't fall into the wrong hands.

As to #3, if it's this morning before noon, the Bromwich Group address. I'll leave word at the reception desk at 1776 K Street. If it's not until this afternoon, the Robbins Russell address. Eric can confirm whether the address you have for him is correct. Please either include a copy of our client's letter in the package you deliver to us, or send it to us electronically.

As to #4, when and where will the materials be made available?

Thank you.

MRB

b6 -1

b7C -1

b7E -4

From: Will, Candice M. (DO) (FBI) [mailto:]

Sent: Thursday, March 08, 2018 9:13 AM

To: Bromwich, Michael R.

Cc: >; Schools, Scott (ODAG) (JMD); Michael R.

Bromwich

Subject: Re:

b6 -3

b7C -3

Michael:

1. Thank you.

2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036, and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.

b6 -3

b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'y 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you

tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R." [REDACTED] >>

b6 -3
b7C -3

Date: 3/8/18 8:31 AM (GMT-05:00)

To: "Will, Candice M. (DO) (FBI)" [REDACTED] >>

b6 -1
b7C -1
b7E -4

Cc: [REDACTED], "Schools, Scott (ODAG) (JMD)"

<Scott.Schools@usdoj.govmailto:Scott.Schools@usdoj.gov>> "Michael R. Bromwich"

b6 -3
b7C -3

[REDACTED] >>
Subject: Re:

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

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Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 10:14 AM
To: [REDACTED] Bromwich, Michael R.
Cc: Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re: RE: Re:

b6 -3
b7C -3

Michael:

As noted in a prior email, the package was not delivered. We're good there.

We are delivering our packages to you now at the addresses you both have approved. At your request, your package, Michael, will include a separate envelope marked for your client. (With rare exception, we do not transmit our materials electronically.)

The file will be available at our offices: The Woodies Bldg, 1025 F Street NW, Suite 410, Wash DC 20004.

Candice

----- Original message -----

From: [REDACTED]
Date: 3/8/18 10:02 AM (GMT-05:00)
To: "Bromwich, Michael R." [REDACTED]
Cc: "Will, Candice M. (DO) (FBI)" [REDACTED] "Schools, Scott (ODAG) (JMD)"
<Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re: RE: Re:

b6 -3
b7C -3

b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

My address is correct, thank you.

Eric

Eric B. Bruce

[REDACTED] (Washington DC)
[REDACTED] (New York)

b6 -3
b7C -3

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On Mar 8, 2018, at 9:58 AM, Bromwich, Michael R.

[REDACTED] wrote:

b6 -3
b7C -3

Candice:

As to #2, yes, that's our preference for relieving the package so it doesn't fall into the wrong hands.

As to #3, if it's this morning before noon, the Bromwich Group address. I'll leave word at the reception desk at 1776 K Street. If it's not until this afternoon, the Robbins Russell address. Eric can confirm whether the address you have for him is correct. Please either include a copy of our client's letter in the package you deliver to us, or send it to us electronically.

As to #4, when and where will the materials be made available?

Thank you.

MRB

From: Will, Candice M. (DO) (FBI) [mailto:[REDACTED]]
Sent: Thursday, March 08, 2018 9:13 AM
To: Bromwich, Michael R.
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re:

b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

Michael:

1. Thank you.
2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036, [REDACTED] and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.

b6 -3
b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'ly 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R." [mailto:[REDACTED]]
Date: 3/8/18 8:31 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [mailto:[REDACTED]]>
Cc: [REDACTED], "Schools, Scott (ODAG) (JMD)" [mailto:Scott.Schools@usdoj.gov], "Michael R. Bromwich" [mailto:Michael.R.Bromwich@usdoj.gov]

b6 -3
b7C -3

b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

< [REDACTED] >>
Subject: Re:

b6 -3
b7C -3

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

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Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 10:01 AM
To: Bromwich, Michael R.
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re:

b6 -3
b7C -3

Michael,

FedEx had not yet delivered your client's pkg. They are returning the pkg to my office.

Candice

----- Original message -----

From: "Bromwich, Michael R." [REDACTED]
Date: 3/8/18 8:31 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [REDACTED]
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re:

b6 -3
b7C -3
b6 -1
b7C -1
b7E -4b6 -3
b7C -3

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 9:19 AM
To: Bromwich, Michael R.
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re:

b6 -3
b7C -3

Michael:

I do not mean to suggest in paragraph 4 below that those are the only items contained in FBI OPR's file, only that when you read "approx'ly 1000 pages," many of those pages are made up of the items I listed. There are also, as you would expect, transcripts or partial transcripts of various interviews, texts, emails.

Candice

----- Original message -----

From: "Will, Candice M. (DO) (FBI)" [REDACTED]
Date: 3/8/18 9:13 AM (GMT-05:00)
To: "Bromwich, Michael R." [REDACTED]
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re:

b6 -1
b7C -1
b7E -4

b6 -3
b7C -3

Michael:

1. Thank you.
2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?
3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036 [REDACTED], and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.
4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'ly 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.
5. Yes.

b6 -3
b7C -3

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R." [REDACTED]
Date: 3/8/18 8:31 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [REDACTED]
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re: [REDACTED]

b6 -3

b7C -3

b6 -1

b7C -1

b7E -4

b6 -3

b7C -3

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 9:13 AM
To: Bromwich, Michael R.
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re:

b6 -3

b7C -3

Michael:

1. Thank you.

2. The contents of his package are the same as the contents of your package. The letter is inside an envelope inside a FedEx mailer sent to your client's home address. We will contact FedEx to request that the envelope not be delivered. If it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

3. This morning, I am having the package hand-delivered to Eric at Kobre & Kim, 1919 M Street NW, Wash DC 20036, [REDACTED] and to you at The Bromwich Group, 1776 K Street, Wash DC 20006, (202) 682-4267, unless you would prefer Robbins Russell, 1801 K Street NW #411L, Wash DC 20006, (202) 775-4500.

b6 -3

b7C -3

4. The package contains a single letter. FBI OPR's file is, rough estimate, 1000 pages, which includes approx'ly 200 pages of FBI OPR precedent case descriptions (how we decided prior cases under the same FBI Offense Codes), as well as Comey's congressional testimony (cited by the OIG), CFRs, the FBI's Media Policy, our proposed action (the single letter you will be receiving today), our Report of Investigation, the OIG's final report, your proposed response to the OIG's draft report.

5. Yes.

6. It is a DAG Memorandum dated May 27, 2008. It is contained in FBI OPR's file being made available to you tomorrow morning.

7. Thank you.

Thank you.

Candice

----- Original message -----

From: "Bromwich, Michael R." [REDACTED]
Date: 3/8/18 8:31 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [REDACTED]
Cc: [REDACTED] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [REDACTED]
Subject: Re:

b6 -3

b7C -3

b6 -1

b7C -1

b7E -4

b6 -3

b7C -3

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

Will, Candice M. (DO) (FBI)

From: Bromwich, Michael R. [REDACTED] b6 -3
Sent: Thursday, March 08, 2018 8:31 AM b7C -3
To: Will, Candice M. (DO) (FBI)
Cc: [REDACTED] Schools, Scott (ODAG) (JMD); Michael R. Bromwich b6 -3
Subject: Re: b7C -3
Attachments: FBI NDA -- 3-8-18.pdf; ATT00001.htm

Candice:

1. Attached is my executed NDA.
2. Our client is out of town, so he will not promptly receive the package you delivered to his home. If the contents of his package are the same as ours, please advise us and we will make a copy and transmit it to him. In any event, because I assume the contents of the package are sensitive, I suggest you direct that the package be retrieved.
3. Please confirm the addresses to which you plan to deliver the packages to Eric Bruce and me.
4. Please advise in general terms the contents of the package and the volume and type of materials that will be available for our review starting tomorrow morning, and where they will be made available. Our client is out of town and will not be able to review the materials starting tomorrow.
5. Please advise whether the OIG provided you with the written submission Mr. Bruce submitted in response to the draft OIG report.
6. Please provide the DOJ/FBI protocol that assigns this matter to the DAG rather than the FBI.
7. We will be in touch with Scott Schools later today.

Thank you.

MRB

**NONDISCLOSURE AGREEMENT**

I, Michael R. Bromwich, an attorney licensed to practice in the state of
(Name of Attorney)

New York + the Dist. of Columbia, as consideration for being granted access to certain FBI-related
(State)

information in connection with my legal representation of Federal Bureau of Investigation (FBI) employee,

Andrew McCabe, as to Administrative Inquiry
(Name of Employee)

263-HQ-, agree as follows:
(File Number from Notification Form)

I will not disclose orally, in writing, or by any other means, to any party other than the Director, FBI; Internal Investigations Section/Inspection Division, FBI; the Office of Professional Responsibility (OPR), FBI; the Office of the General Counsel, FBI; the United States Attorney General; the Office of the Inspector General, Department of Justice (DOJ); OPR, DOJ; or otherwise as required by law, court order, or subpoena (and then under seal to the extent permitted by law) - **without the prior written authorization of the FBI** - any information or material derived from or relating to FBI files or any other FBI-related information acquired by virtue of my legal representation of this matter.

I may, however, disclose such information to members and employees of my law firm or office pursuant to my legal responsibilities in this matter, but only based upon a need to know and provided that all persons who receive this information first shall be shown a copy of this nondisclosure agreement and, in a written and signed Certificate such as that annexed hereto, state that he or she has read this nondisclosure agreement and agrees to be bound by the terms thereof. I agree to retain such certificates until the conclusion of this matter and shall make such certificates available to the FBI upon request.

I further agree that all documents released by the FBI in this matter remain the property of the FBI and that, upon the conclusion of this matter or at the FBI's earlier request, I will return all such documents and any copies of them to the FBI.

I acknowledge that the unauthorized disclosure of the aforementioned information would violate this agreement, might additionally violate federal law, regulations or policy, and could form the basis for legal action.

Michael R. Bromwich

(Signature of Attorney)

March 8, 2018

(Date)

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 07, 2018 9:15 PM b6 -3
To: [REDACTED] Michael R. Bromwich b7C -3
Cc: Schools, Scott (ODAG) (JMD)

Gentlemen:

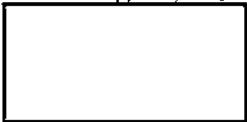
I will have our package delivered to Mr. Bruce's office in the morning, and to Mr. Bromwich's office as soon as I receive Michael's signed NDA. As I indicated earlier today, we overnighted our package to your client's home address. He should receive it tomorrow morning.

Our file will be available for your review starting Friday morning and I encourage you and your client to come in starting Friday morning to review it. Please let me know what works best for you.

As I advised Michael, the DAG will be the final decision-maker in this matter. Please reach out to Scott Schools in the DAG's office for further information about how this matter will proceed. I am copying Scott on this email for ease of contact.

Please let me know if I may be of assistance. Thank you.

Candice M. Will
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation
1025 F Street NW, Suite 410
Washington, DC 20004



b6 -1
b7C -1
b7E -4

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 07, 2018 6:34 PM
To: [REDACTED] Bromwich, Michael R. b6 -3
Cc: [REDACTED] b7C -3
Subject: Re: FBI NDAs

Thanks, Eric. We will mail you our package tomorrow. Candice

----- Original message -----
From: [REDACTED] b6 -3
Date: 3/7/18 6:28 PM (GMT-05:00) b7C -3 b6 -1
To: "Will, Candice M. (DO) (FBI)" [REDACTED] "Bromwich, Michael R." b7C -1
[REDACTED] b7E -4
Cc: [REDACTED] b6 -3
Subject: RE: FBI NDAs b7C -3

Ms. Will,

Thank you for your assistance. Attached you will find my signed NDA relating to this matter.

Best,

Eric

Eric B. Bruce

[REDACTED] (Washington DC) b6 -3
(New York) b7C -3

KOBRE & KIM LLP
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New York | London | Hong Kong | Shanghai | Seoul | Washington, DC | San Francisco | Miami | Cayman
Islands | BVI

-----Original Message-----
From: Will, Candice M. (DO) (FBI) [mailto:[REDACTED]] b6 -1
Sent: Wednesday, March 07, 2018 10:55 AM b7C -1
To: Bromwich, Michael R. [REDACTED] b7E -4
Cc: Eric Bruce [REDACTED] b6 -3
Subject: RE: FBI NDAs b7C -3

Dear Mr. Bromwich and Mr. Bruce,

I am sending something out today. I will wait until I receive your executed NDAs to forward the materials to you. Because your client is already bound by the FBI's confidentiality rules by virtue of his employment, I will go ahead and send the package to him. Thank you.

Candice Will

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

From: Bromwich, Michael R. [mailto: [REDACTED]]
Sent: Wednesday, March 07, 2018 9:58 AM
To: Will, Candice M. (DO) (FBI) < [REDACTED] >
Cc: [REDACTED]
Subject: Re: FBI NDAs

b6 -3
b7C -3
b6 -1
b7C -1
b7E -4
b6 -3
b7C -3

Thanks very much for this. We will provide the NDA to our client. I will execute this and send it back to you when I return to D.C. tomorrow.

Best.

MRB

> On Mar 6, 2018, at 11:44 AM, Will, Candice M. (DO) (FBI) < [REDACTED] > wrote:
>
> Dear Mr. Bromwich and Mr. Bruce,
>
> Attached please find two nondisclosure agreements, one for you to execute and one for your client to execute. Please return them to me at your earliest convenience. Thank you.
>
> Candice M. Will
> Assistant Director
> Office of Professional Responsibility
> Federal Bureau of Investigation
> 1025 F Street, Suite 410
> Washington, DC 20004
> [REDACTED] (office)
> [REDACTED] (cell)
> [REDACTED]
>
> <Attorney Nondisclosure Agreement.pdf> <Employee Nondisclosure Agreement.pdf>

b6 -1
b7C -1
b7E -4

b6 -1
b7C -1
b7E -4

This e-mail message is from Kobre & Kim LLP, a law firm, and may contain legally privileged and/or confidential information. If the reader of this message is not the intended recipient(s), or the employee or agent responsible for delivering the message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete this e-mail message and any attachments from your computer without retaining a copy.

IIS-3 (2005-05-25)



NONDISCLOSURE AGREEMENT

I, Eric B. Bruce, an attorney licensed to practice in the state of
(Name of Attorney)

D.C. + New York, as consideration for being granted access to certain FBI-related
(State)

information in connection with my legal representation of Federal Bureau of Investigation (FBI) employee,

Andrew McCabe, as to Administrative Inquiry
(Name of Employee)

263-HQ-, agree as follows:
(File Number from Notification Form)

I will not disclose orally, in writing, or by any other means, to any party other than the Director, FBI; Internal Investigations Section/Inspection Division, FBI; the Office of Professional Responsibility (OPR), FBI; the Office of the General Counsel, FBI; the United States Attorney General; the Office of the Inspector General, Department of Justice (DOJ); OPR, DOJ; or otherwise as required by law, court order, or subpoena (and then under seal to the extent permitted by law) - **without the prior written authorization of the FBI** - any information or material derived from or relating to FBI files or any other FBI-related information acquired by virtue of my legal representation of this matter.

I may, however, disclose such information to members and employees of my law firm or office pursuant to my legal responsibilities in this matter, but only based upon a need to know and provided that all persons who receive this information first shall be shown a copy of this nondisclosure agreement and, in a written and signed Certificate such as that annexed hereto, state that he or she has read this nondisclosure agreement and agrees to be bound by the terms thereof. I agree to retain such certificates until the conclusion of this matter and shall make such certificates available to the FBI upon request.

I further agree that all documents released by the FBI in this matter remain the property of the FBI and that, upon the conclusion of this matter or at the FBI's earlier request, I will return all such documents and any copies of them to the FBI.

I acknowledge that the unauthorized disclosure of the aforementioned information would violate this agreement, might additionally violate federal law, regulations or policy, and could form the basis for legal action.

[Signature]
(Signature of Attorney)

3/8/18
(Date)



CERTIFICATE

I, _____, acknowledge that I have reviewed the
(Printed Name)
Nondisclosure Agreement between the Federal Bureau of Investigation and _____,
(Name of Primary Attorney)
executed on _____, and agree to be bound by the terms thereof.
(Date of Agreement)

(Signature)

(Today's Date)

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 07, 2018 10:55 AM
To: 'Bromwich, Michael R.'
Cc: [REDACTED]
Subject: RE: FBI NDAs

b6 -3

b7C -3

Dear Mr. Bromwich and Mr. Bruce,

I am sending something out today. I will wait until I receive your executed NDAs to forward the materials to you. Because your client is already bound by the FBI's confidentiality rules by virtue of his employment, I will go ahead and send the package to him. Thank you.

Candice Will

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

b6 -3

b7C -3

From: Bromwich, Michael R. [mailto:[REDACTED]]
Sent: Wednesday, March 07, 2018 9:58 AM
To: Will, Candice M. (DO) (FBI) <[REDACTED]>
Cc: [REDACTED]
Subject: Re: FBI NDAs

b6 -1

b7C -1

b7E -4

b6 -3

b7C -3

Thanks very much for this. We will provide the NDA to our client. I will execute this and send it back to you when I return to D.C. tomorrow.

Best,

MRB

> On Mar 6, 2018, at 11:44 AM, Will, Candice M. (DO) (FBI) <[REDACTED]> wrote:

b6 -1

b7C -1

b7E -4

> Dear Mr. Bromwich and Mr. Bruce,

> Attached please find two nondisclosure agreements, one for you to execute and one for your client to execute. Please return them to me at your earliest convenience. Thank you.

> Candice M. Will

> Assistant Director

> Office of Professional Responsibility

> Federal Bureau of Investigation

> 1025 F Street, Suite 410

> Washington, DC 20004

> [REDACTED] (office)

b6 -1

> [REDACTED] (cell)

b7C -1

> [REDACTED]

b7E -4

> <Attorney Nondisclosure Agreement.pdf> <Employee Nondisclosure Agreement.pdf>

[redacted] (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 5:07 PM
To: [redacted] (DO) (FBI) [redacted] (DO) (FBI)
Subject: Fwd: FBI SES policies
Attachments: FBI policy.doc

b6 -1
b7C -1

----- Original message -----

From: "Schools, Scott (ODAG)" <Scott.Schools@usdoj.gov>
Date: 3/8/18 4:53 PM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [redacted]
Subject: FW: FBI SES policies

b6 -1
b7C -1
b7E -4

From: Hur, Robert (ODAG)
Sent: Thursday, March 8, 2018 3:23 PM
To: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: FW: FBI SES policies

b5 Per DOJ/OIP

Per Steve [redacted]
[redacted]

b5 Per DOJ/OIP

[redacted] Happy to reach
out to her if you'd like.

Thanks,
Rob

From: Engel, Steven A. (OLC)
Sent: Thursday, March 8, 2018 2:56 PM
To: Hur, Robert (ODAG) <rhur@jmd.usdoj.gov>
Subject: FBI SES policies

JMD sent us the attached FBI guidelines. The relevant rules are at pages 15 to 18, which I have
pasted below (the formatting may be messed up below). Of note:

b5 Per DOJ/OLC

1. [redacted]

263D-HQ

-39

b6 -1
b7C -1

FBI 18-cv-01766-1541

ACTIONS TAKEN AFTER COMPLETION OF PROBATIONARY PERIOD.

1. Removal for Performance. A career appointee may be removed from SES and assigned to a GS 15 position within the FBI at any time for less than fully successful executive performance based on a minimum of 120 days in the SES position and in accordance with the provisions of Chapter VI. A career appointee who has completed the one year probationary period, but who is removed from the SES for executive performance, is guaranteed placement in a GS 15 position (see paragraph E of this chapter). Any career appointee being removed for performance reasons will receive a written notice at least 30 calendar days before the effective date of removal which will include:
 - a. The reason for the removal, including reference to the final rating(s) upon which the decision was based;
 - b. The appointee's right to be placed in a position outside the SES, and information regarding the position to which the employee will be reassigned, if such decision has been made. If that decision has not been made, the employee may be advised of the proposed assignment in a supplementary notice issued at least 10 days in advance of the effective date of the action;
 - c. The appointee's right, if any, to a discontinued service retirement; and
 - d. The appointee's right to request a reconsideration of the proposed action by the Director. Such a request must be made at least 15 days prior to the effective date of the action. For key executives, the response to a proposed action will be considered by the Director and ultimately the Deputy Attorney General who serves as the final approval authority. For all other executives the Director will serve as

the final approval authority. A removal for performance is not appealable to the Merit Systems Protection Board.

2. Adverse Actions (Disciplinary Removal/Suspension). Action may be taken against a member of the SES for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. This action may include removal from the civil service or suspension for more than 14 days. Suspension in the SES may include indefinite suspension where additional investigation is necessary to resolve serious disciplinary proceedings such as allegations of criminal activity, revocation of security clearance, or disruptive behavior which may have underlying medical causes.

The Office of Professional Responsibility is the entity within the FBI charged with processing adverse actions for review by the Director.

a. Entitlements. Any career SES employee who has completed the one-year probationary period, and any probationary or limited term/limited emergency appointee who was a preference eligible employee immediately prior to appointment to the SES, against whom such adverse action is taken, is entitled to:

- (1) At least 30 days advance written notice stating specific reasons for proposed actions. However, if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment can be imposed, the advance notice may be curtailed to as little as seven days.
- (2) A reasonable time, but not less than seven days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) Be represented by an attorney or other representative; and
- (4) A written decision of final action and specific reasons therefor at the earliest practicable date.
- (4) If the employee wishes the FBI to consider any medical condition that may have affected the basis for the adverse action, he/she will be permitted to furnish medical documentation of the condition.

b. Special circumstances. If during the required 30 day advance notice period the employee's presence in the work place may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government business, the following actions may be taken:

- (1) The employee may be assigned to duties where he/she is no longer a threat to safety, the FBI's mission or Government property;
- (2) The employee may be placed on leave with his/her consent;
- (3) The employee may be carried on appropriate leave if he/she is voluntarily absent for reasons not originating with the FBI;
- (4) The notice period may be curtailed, and the employee placed in a nonduty status with pay, where the FBI has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or
- (5) If none of the above alternatives are available, the employee may be placed in a paid nonduty status during all or part of the notice period.

c. Documentation. The notice of proposed adverse action will inform the employee of his/her right to review the material that is relied on to support the reasons for the action(s). The FBI will not use material that cannot be disclosed to that employee, his/her representative, or designated physician to support the reasons provided in the notice.

d. Determination. In arriving at its written decision, the FBI will consider only the reasons specified in the notice of proposed action and will consider the reply of the employee or his/her representative as well as any medical documentation which has been submitted. Written notice of the decision will be delivered at or before the time the adverse action will be effective. The Director has final approval authority regarding removals and adverse actions for the majority of SES employees, excepting only those who are key executives for which final approval authority resides with the Deputy Attorney General.

3. Removal as a result of RIF. A RIF can take place in the SES based upon elimination or modification of positions due to a reorganization, lack of funds or curtailment of work, or other factors. Retention in the SES will be based upon procedures consistent with Title 5 U.S.C. §3595(a).

An employee who is removed from the SES as the result of a RIF will be reduced to a GS 15 and placed in a non-SES position within the FBI. The reduced employee will be entitled to guaranteed placement in accordance with paragraph E of this chapter, if he/she has completed any required probationary period. After receiving the specific notice of a RIF decision, an employee may appeal that decision in writing to the Director.

TABLE OF CONTENTS

<u>Subject</u>	<u>Page</u>
I. GENERAL PROVISIONS	
A. POLICY	1
B. DEFINITIONS	2
II. RESPONSIBILITIES AND AUTHORITIES	
A. THE ATTORNEY GENERAL	4
B. THE DEPUTY ATTORNEY GENERAL	4
C. THE DIRECTOR OF THE FBI	4
D. THE SES BOARD	4
E. THE PERFORMANCE REVIEW BOARD (PRB)	4
F. THE ADMINISTRATIVE SERVICES DIVISION..	4
III. ADMINISTRATION	
A. THE SES BOARD	5
B. THE PERFORMANCE REVIEW BOARD . . .	6
IV. STAFFING	
A. MERIT PRINCIPLES	7
B. CAREER APPOINTMENTS	7
C. LIMITED TERM/LIMITED EMERGENCY APPOINTMENTS	8
D. REINSTATEMENT	9
V. REMOVAL AND ADVERSE ACTION	
A. GENERAL	10
B. ACTIONS TAKEN DURING PROBATIONARY PERIOD	10
C. ACTIONS TAKEN AFTER COMPLETION OF PROBATIONARY PERIOD	11
D. ACTIONS TAKEN AGAINST LIMITED TERM/EMERGENCY APPOINTEES	15
E. GUARANTEED PLACEMENT OUTSIDE THE SES	15
F. GUARANTEED ANNUITY	17
VI. PERFORMANCE APPRAISAL	
A. GENERAL INFORMATION	18
B. PERFORMANCE APPRAISAL FOR THE SES	28

C. ACTIONS BASED ON LESS THAN FS PERFORMANCE	38
D. ESTABLISHMENT OF DOJ PERFORMANCE REVIEW BOARDS	42

(Revised 11/2004)

VII. PAY FOR THE SENIOR EXECUTIVE SERVICE

A. SALARY LEVELS	26
B. SETTING INDIVIDUAL PAY RATES	26
C. AWARDS	27
D. LIMITATION ON SALARY	29

VIII. EXECUTIVE DEVELOPMENT

A. EXECUTIVE DEVELOPMENT PROGRAM	30
B. SABBATICALS	30

IX. MISCELLANEOUS PROVISIONS

A. TRAVEL EXPENSES	32
B. ANNUAL LEAVE	32
C. LAST MOVE HOME EXPENSES	32
D. FURLOUGHS	32
E. TRAINING	34
F. REPORTS AND EVALUATION	34
G. EXTENSION BEYOND MANDATORY RETIREMENT.	34
H. RECORDS.	34

CHAPTER I. GENERAL PROVISIONS

A. POLICY. Public Law 100-325 authorized the Attorney General to establish a Senior Executive Service (SES) for the FBI to include designated managerial and supervisory positions. It is the policy of the FBI to administer its SES so as to:

- provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

- ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such

factors as improvements in efficiency, productivity, quality of work or service; cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

- assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

- recognize exceptional accomplishment;

- enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

- provide for severance pay, early retirement, and replacement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

- protect senior executives from arbitrary or capricious actions;

- provide for program continuity and policy advocacy in the management of public programs;

- maintain a merit personnel system free of prohibited personnel practices;

- ensure accountability for honest, economical, and efficient Government;

- ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

- provide for the initial and continuing systematic development of highly competent senior executives;

- provide for an executive system which is guided by the public interest and free from improper political interference; and,

- appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and

responsibilities.

B. DEFINITIONS. Throughout the remainder of this policy statement, all references to "SES" indicate the FBI SES, unless otherwise specified. The provisions of this policy do not supersede the jurisdiction of the Office of Attorney Personnel Management, Department of Justice (DOJ), in matters pertaining to those employees serving in FBI SES non-Agent attorney positions, unless a delegation of authority otherwise exists.

1. SES Position is any managerial or supervisory position classified above GS 15 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by Presidential appointment with the advice and consent of the Senate and which involves:
 - a. Directing the work of an organizational unit;
 - b. Being held accountable for the success of one or more specific programs or projects;
 - c. Monitoring progress toward organizational goals and making appropriate adjustments to such goals;
 - d. Supervising the work of employees other than personal assistants; or
 - e. Otherwise exercising important policy making, policy determining, or other executive functions.
2. Senior Executive is a member of the SES.
3. Key Executive is the term used throughout this policy to refer to individuals who occupy:
 - a. the positions of Executive Assistant Director, Assistant Director, Assistant Director in Charge, or General Counsel, and
 - b. positions which report to the Director,

4. A Limited Emergency Appointment may be made to meet a bona fide, unanticipated, urgent need. The appointment may not exceed 18 consecutive months and is nonrenewable.
5. A Limited Term Appointment may be made to a position the duties of which will expire at the end of a specified period or to a position that special circumstances require to be filled on a rotating basis. The appointment may not exceed five years and is nonrenewable.
6. SES Limited Appointment Allocation. Limited term and limited emergency appointments are included in the total FBI SES allocation. The total number of limited emergency and limited term appointees may not exceed 5% of the FBI total allocation.

CHAPTER II. RESPONSIBILITIES AND AUTHORITIES

- A. THE ATTORNEY GENERAL has final authority over the SES in that he/she may issue governing regulations and shall from time to time issue guidance to the Director regarding aspects of the SES. The Attorney General is solely responsible for nominating FBI executives for Presidential Rank Award recognition.
- B. THE DEPUTY ATTORNEY GENERAL provides overall supervision and direction to the FBI SES and has final approval authority for many personnel matters involving executives, e.g., salary adjustment and bonus decisions.
- C. THE DIRECTOR OF THE FBI is authorized by the Deputy Attorney General to manage the FBI SES in accordance with 5 U.S.C. §3151, to include taking final action in matters pertaining to employment, direction, and general administration of personnel, including appointment, assignment, training, promotion, demotion, compensation, leave, classification, and separation. [The Attorney General and Deputy Attorney General reserve final approval authority for matters pertaining to key executives and key executive positions.]
- D. THE SES BOARD consists of high ranking executives selected by the Director to provide recommendations and/or final decisions in a vast array of matters impacting the use of executive resources. The SES Board shall, as appropriate, establish sundry other boards and committees as necessary to facilitate the administration and operation of the SES.
- E. THE PERFORMANCE REVIEW BOARD (PRB) evaluates the initial appraisal of senior executives for compliance and sufficiency. In the event an employee responds to one or more negative ratings, the PRB will review the response and addend a recommendation to sustain or adjust the appraisal for consideration of the final approving official. The PRB may also evaluate bonus recommendations based on the content of the appraisal.
- F. THE ADMINISTRATIVE SERVICES DIVISION (ASD) provides policy support to the SES Board and furnishes an executive

secretary to the PRB and all subsidiary boards. ASD works closely with the Justice Management Division, DOJ to interpret and implement laws and regulations impacting the FBI SES.

CHAPTER III. ADMINISTRATION

The SES Board and the PRB provide recommendations on personnel management matters required for the continuous operation of the SES, e.g., selection, promotion, evaluation of performance, recommendation for recognition, succession planning, etc. Additional boards and committees, such as those necessary for the initial rating of the Special Agents in Charge of the various field offices, will be formed and staffed as necessary to ensure the efficient accomplishment of internal goals and objectives.

A. THE SES BOARD.

1. Membership. The SES Board will consist of high ranking executives selected by the Director. Members will be recused from voting on matters involving themselves or their prior decisions and as otherwise required by the Board Chair based on conflicts or other appropriate bases.
2. Functions. Under delegation of authority from the Director, the SES Board provides management oversight and is responsible for conducting the following functions:
 - a. Executive personnel planning, including determination of numbers of SES positions needed, development of executive staffing plans, forecasting of executive requirements, determination of executive development program objectives.
 - b. Preparing recommendations regarding the staffing of executive positions, including selections, promotions, reassignments and details.
 - c. Executive development, including selection of candidates for programs to develop executive qualifications, the planning and conduct of such programs for the continuing development of senior executives, and evaluation of performance during developmental assignments.

- d. Position management, including proper use of SES and other positions, and redistribution of functions to maximize the effectiveness of agency executives.
- e. Pay management, through recommendations to the Director on staffing, promotion, and demotion matters, as well as recruitment, relocation and retention pay incentives available to the SES.
- f. Development of policy on discipline and removal of executives for cause.
- g. Development of policy on removal from the SES based on performance and alternatives to removal for use in appropriate cases.
- h. Development of policy on performance appraisal and recognition.
- i. Incorporation of DOJ and FBI equal employment opportunity policies into executive personnel plans and activities.
- j. Establishment of boards and committees to facilitate the administration and operation of the SES, to include review and evaluation of the reports and recommendations from such boards/committees, assuring that DOJ requirements are met where applicable.
- k. Such other matters as are approved, implicitly or explicitly, by the Director and not prohibited by DOJ or other policy or law.

B. THE PERFORMANCE REVIEW BOARD (PRB).

DOJ guidance will be provided on an annual basis to establish PRBs in each component. Please see chapter VI for further information.

Chapter IV. STAFFING

A. MERIT PRINCIPLES. The SES Board will ensure that merit principles, executive qualifications, selection criteria, and equal employment opportunity objectives are considered in selection matters under their purview. The SES Board will review the executive qualifications of each candidate meeting selection guidelines, including all current FBI SES members and qualified employees outside the FBI SES population.

B. CAREER APPOINTMENTS to the SES are normally made from within the career ranks of the FBI, to include both Special Agent and non-Agent personnel, considering demonstrated executive experiences and, where relevant, successful participation in the Career Development Program. Sufficient flexibility exists to allow for the appointment of non-FBI career employees whose special or unique qualifications indicate a likelihood of executive success.

1. Probationary Period. An individual who receives an SES career appointment must serve a 1-year probationary period.
2. Reassignment. SES members may be reassigned to meet mission needs, better use or enhance their executive qualifications, or provide developmental opportunities.

a. Authority: The Director may reassign SES members from one position to another. The Director, based on recommendation from the SES Board, determines that the SES member being proposed for reassignment meets the technical qualification requirements of the position to which being reassigned. When reassigning key executives,, the Director will seek concurrence from the Deputy Attorney General prior to the action being made final.

b. Notice Requirements: The SES member must be provided with written notice in advance of any reassignment/transfer.

(1) Non-geographic reassignments: The appointee must receive a written notice at least 15 days in advance of the effective date of the reassignment. An appropriate management official will generally consult with the appointee before the written notice is delivered.

(2) Geographic reassignments (i.e., to another commuting area): Management will consult with and consider an executive's input prior to making a final reassignment decision. Following a decision, the executive is given a written notice at least 60 days in advance of the effective date of any reassignment. This written notice must contain the reasons for the reassignment. The advance written notice may be waived with the written consent of the executive being reassigned.

(3) Voluntary reassignment: An SES member may request a reassignment if he/she meets all technical qualification requirements. Such a request must be in writing signed by the SES member and the documentation should be preserved. The written request will preclude necessity for the advance notice described above.

- C. LIMITED TERM/LIMITED EMERGENCY APPOINTMENTS to SES are made in consideration of demonstrated special qualifications and/or experience which uniquely qualify the individual to serve either on an emergency basis for a specified, limited period, or in a position the duties of which will expire within a specified period of time or which must be filled on a rotating basis. The Director must approve all limited appointments and seek the concurrence of the Deputy Attorney General where the appointment is to a key executive position.

Reassignment:

a. A limited term appointee may be reassigned to another SES position provided that the duties of such a position terminate within five years or less. Under no circumstances may a limited term appointee serve in one or more such positions in the FBI for more than five years.

b. A limited emergency appointee may be reassigned to another SES position in the FBI which is established to meet a bona fide, unanticipated, urgent need, except that the limited emergency appointee may not serve in one or more such positions in the FBI for more than 18 consecutive months.

c. Neither a limited term nor a limited emergency appointee may be appointed to or continue to hold a position under such an appointment if within the preceding 72 months the individual has served more than 60 months in the aggregate under any combination of such appointments.

D. REINSTATEMENT of a former FBI SES career appointee to any SES position for which the appointee is qualified may occur if the following conditions are met.

1. The appointee has successfully completed, or was not required to complete, a one-year SES probationary period; and
2. The appointee left SES for reasons other than misconduct, neglect of duty, malfeasance, failure to accept a directed reassignment or to accompany a position in a transfer of function, or less than fully successful executive performance; or
3. The employee was appointed by the President to any civil service position outside SES, left that position for reasons other than misconduct, neglect of duty, malfeasance, and applies for reinstatement within 90 days after separation from the Presidential appointment; and
4. The Deputy Attorney General must approve reinstatement to a key executive position.

Reemployed annuitants in the SES serve at the discretion of the Director. Final administrative action regarding reemployed annuitants in key executive positions is subject to review by the Deputy Attorney General..

CHAPTER V. REMOVAL AND ADVERSE ACTION

- A. GENERAL. A career appointee may be removed from the SES for a variety of reasons, including less than fully successful performance, misconduct, conditions arising before appointment, and reduction in force (RIF). Final approval for adverse actions involving key executives will be at the discretion of the Deputy Attorney General. The Director is the final approval authority for all other FBI senior executives.

Unless a career appointee is removed for less than Fully Successful executive performance pursuant to the appraisal process described in Chapter VI, he/she may not be involuntarily removed from the SES within 120 days after the appointment of a new Director. A removal action based on performance is not subject to the 120-day moratorium if the action is based on a final rating given before the appointment of the Director. Procedural entitlements and placement of the appointee are dependent upon the basis for the removal action.

B. ACTIONS TAKEN DURING PROBATIONARY PERIOD.

1. Performance-based removal. The removal for unsatisfactory performance of a career appointee who has not completed the probationary period need not be based on a final rating of record. Regardless of whether a rating has been issued, a probationary executive being removed for performance must be notified in writing of the effective date of the action. This notice must, at a minimum:
 - a. State the agency's conclusions as to the inadequacies of the executive's performance;
 - b. State whether the appointee has placement rights and, if so, identify the position to which he/she will be assigned (see paragraph E of this chapter regarding placement rights); and
 - c. Show the effective date of the action.

2. Adverse action. An employee being removed or suspended for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function, must be notified in writing before the effective date of the action. This notice must, at a minimum:

- a. State the basis for the action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and
- b. Show the effective date of the action.

However, if the employee was a preference eligible employee immediately prior to his/her appointment, the provisions in 5 CFR Part 752, Subpart F apply.

3. Removal based on conditions arising before appointment. When action to remove is based in whole or in part on conditions arising before the appointment, and the probationary employee was not a preference eligible employee immediately before appointment, the following procedures apply:

- a. The agency shall give the employee an advance written notice stating the specific reasons for the proposed removal;
- b. The employee must be provided a minimum of seven days to reply; and
- c. A written decision, showing the reasons for the action and the effective date, must be given to the employee at or before the time the action will be made effective.

However, if the employee was a preference eligible employee immediately prior to his/her appointment, the provisions in 5 CFR Part 752, Subpart F apply.

4. Removal based on RIF. The same procedures apply to

probationary and non-probationary employees during a RIF. See C.3., below.

C. ACTIONS TAKEN AFTER COMPLETION OF PROBATIONARY PERIOD.

1. Removal for Performance. A career appointee may be removed from SES and assigned to a GS 15 position within the FBI at any time for less than fully successful executive performance based on a minimum of 120 days in the SES position and in accordance with the provisions of Chapter VI. A career appointee who has completed the one year probationary period, but who is removed from the SES for executive performance, is guaranteed placement in a GS 15 position (see paragraph E of this chapter). Any career appointee being removed for performance reasons will receive a written notice at least 30 calendar days before the effective date of removal which will include:
 - a. The reason for the removal, including reference to the final rating(s) upon which the decision was based;
 - b. The appointee's right to be placed in a position outside the SES, and information regarding the position to which the employee will be reassigned, if such decision has been made. If that decision has not been made, the employee may be advised of the proposed assignment in a supplementary notice issued at least 10 days in advance of the effective date of the action;
 - c. The appointee's right, if any, to a discontinued service retirement; and
 - d. The appointee's right to request a reconsideration of the proposed action by the Director. Such a request must be made at least 15 days prior to the effective date of the action. For key executives, the response to a proposed action will be considered by the Director and ultimately the Deputy Attorney General who serves as the final approval authority. For all other executives the

Director will serve as the final approval authority. A removal for performance is not appealable to the Merit Systems Protection Board.

2. Adverse Actions (Disciplinary Removal/Suspension).
Action may be taken against a member of the SES for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. This action may include removal from the civil service or suspension for more than 14 days. Suspension in the SES may include indefinite suspension where additional investigation is necessary to resolve serious disciplinary proceedings such as allegations of criminal activity, revocation of security clearance, or disruptive behavior which may have underlying medical causes.

The Office of Professional Responsibility is the entity within the FBI charged with processing adverse actions for review by the Director.

a. Entitlements. Any career SES employee who has completed the one-year probationary period, and any probationary or limited term/limited emergency appointee who was a preference eligible employee immediately prior to appointment to the SES, against whom such adverse action is taken, is entitled to:

- (1) At least 30 days advance written notice stating specific reasons for proposed actions.
However, if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment can be imposed, the advance notice may be curtailed to as little as seven days.

- (2) A reasonable time, but not less than seven days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

- (3) Be represented by an attorney or other representative; and

(4) A written decision of final action and specific reasons therefor at the earliest practicable date.

(4) If the employee wishes the FBI to consider any medical condition that may have affected the basis for the adverse action, he/she will be permitted to furnish medical documentation of the condition.

b. Special circumstances. If during the required 30 day advance notice period the employee's presence in the work place may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government business, the following actions may be taken:

(1) The employee may be assigned to duties where he/she is no longer a threat to safety, the FBI's mission or Government property;

(2) The employee may be placed on leave with his/her consent;

(3) The employee may be carried on appropriate leave if he/she is voluntarily absent for reasons not originating with the FBI;

(4) The notice period may be curtailed, and the employee placed in a nonduty status with pay, where the FBI has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or

(5) If none of the above alternatives are available, the employee may be placed in a paid nonduty status during all or part of the notice period.

c. Documentation. The notice of proposed adverse action will inform the employee of his/her right to

review the material that is relied on to support the reasons for the action(s). The FBI will not use material that cannot be disclosed to that employee, his/her representative, or designated physician to support the reasons provided in the notice.

d. Determination. In arriving at its written decision, the FBI will consider only the reasons specified in the notice of proposed action and will consider the reply of the employee or his/her representative as well as any medical documentation which has been submitted. Written notice of the decision will be delivered at or before the time the adverse action will be effective. The Director has final approval authority regarding removals and adverse actions for the majority of SES employees, excepting only those who are key executives for which final approval authority resides with the Deputy Attorney General.

3. Removal as a result of RIF. A RIF can take place in the SES based upon elimination or modification of positions due to a reorganization, lack of funds or curtailment of work, or other factors. Retention in the SES will be based upon procedures consistent with Title 5 U.S.C. §3595(a).

An employee who is removed from the SES as the result of a RIF will be reduced to a GS 15 and placed in a non-SES position within the FBI. The reduced employee will be entitled to guaranteed placement in accordance with paragraph E of this chapter, if he/she has completed any required probationary period. After receiving the specific notice of a RIF decision, an employee may appeal that decision in writing to the Director.

D. ACTIONS TAKEN AGAINST LIMITED TERM/EMERGENCY APPOINTEES.

1. Limited term and limited emergency appointees may be removed or suspended from the SES at any time at the discretion of the Director, or Deputy Attorney General for action(s) involving key executives. All

such appointees must be given at least a one day written notice and have no rights to an administrative hearing or appeal. Such employees do not have reinstatement or pay retention rights. The notice provided shall, at a minimum,

a. State the basis for the action (including the act(s) of misconduct, neglect of duty, or malfeasance if those factors are involved); and

b. Show the effective date of the action.

2. Removal for disciplinary reasons of limited term and emergency appointees who held preference eligible status immediately prior to entering the SES and completed at least one year of continuous service in the FBI must be in accordance with the provisions in 5 CFR Part 752, Subpart F.

E. GUARANTEED PLACEMENT OUTSIDE THE SES.

1. Coverage. The following information applies to career appointees, other than reemployed annuitants, who are removed from the SES for any of the following conditions:
 - a. Removal during the probationary period for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons;
 - b. Removal for less than Fully Successful performance if the appointee has completed or was not required to serve an SES probationary period; or
 - c. Removal as a result of a RIF if the appointee has completed or was not required to serve a probationary period.
2. Placement. Any position to which a career appointee under 1.b.c.d. is placed must be a continuing position at no less than GS 15 for which he/she meets qualifications requirements. No career appointee may be placed in a non-SES position which would cause the

separation or reduction in grade of any other employee.

An employee who has not completed the FBI SES probationary period is entitled to be placed in a position of tenure equivalent to the FBI appointment held at the time of entry into the SES, unless the FBI does not have a position of equivalent tenure for which the appointee meets the qualifications requirements or if the appointee is willing to accept a position having different tenure.

Employees who do not complete the FBI SES probationary period and did not hold an FBI career appointment for which they completed a probationary period prior to entering the FBI SES have no placement rights.

3. Pay. Any career SES appointee placed in a GS 15 position, as a result of other than an adverse action, is entitled to receive *basic pay* at the highest rate of:
 - a. The basic pay rate in effect for the non-SES position in which placed;
 - b. The basic payable salary in effect for the position held by the appointee before entering SES; or
 - c. The basic pay rate in effect for the SES career appointee immediately before placement in the non-SES civil service position.

[Note: While basic pay is preserved, other components of salary, to include locality and availability pay, will be limited by the pay caps applicable for the General Schedule.]

SES appointees subject to guaranteed placement prior to completing the FBI SES probationary period will receive the highest previous rate for the position to which they are returned.

4. Disciplinary removal. An appointee removed for

disciplinary reasons has no entitlement to placement in a position outside the SES, and may not be moved directly from an SES position to a non-SES position. Following the removal action, however, a separate action may be taken to appoint the individual to a position outside the SES for which he/she is eligible. In such case, all requirements, including suitability requirements, pertinent to the new appointment must be met.

- F. GUARANTEED ANNUITY. A member of the SES who is removed from SES for less than fully successful executive performance may request a discontinued service annuity if the employee has completed 25 years of service or is at least 50 years of age and has completed 20 years of service.

CHAPTER VI. PERFORMANCE APPRAISAL

This chapter incorporates the DOJ Performance Management System Plan covering all senior executives.

DEPARTMENT OF JUSTICE PERFORMANCE MANAGEMENT SYSTEM PLAN FOR SENIOR EXECUTIVE SERVICE EMPLOYEES

SECTION 1

GENERAL INFORMATION

1. PURPOSE. This framework establishes the Department of Justice (DOJ or Department) Performance Management System (PMS) for Senior Executive Service (SES) employees¹ throughout the Department and also includes the Federal Bureau of Investigation and the Drug Enforcement Administration.
2. SCOPE. This model plan provides general guidelines for component heads to use in developing performance management plans for their organizations. Component heads may adopt this plan or develop their own to tailor their PMS and approach for managing SES performance to fit their unique and changing mission, operational needs, and organizational climates. Component performance plans must be consistent with law and regulation as listed in paragraph 4 of this plan.
3. POLICY. The Department recognizes the importance of integrating its performance appraisal, pay, and incentive award programs into the management of its human resources to promote efficient and effective attainment of its mission, program objectives, and strategic planning initiatives. The Department's PMS for SES members is a management tool to motivate high levels of achievement, and for holding senior executives accountable for their individual and organizational performance by:
 - a. Expecting excellence in senior executive performance;

SES employees are those covered by 5 U.S.C. chapter 31, subchapter II.

- b. Linking performance management with the results-oriented goals of the Government Performance and Results Act (GPRA) of 1993;
 - c. Setting and communicating individual and organizational goals and expectations;
 - d. Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and
 - e. Using performance results as a basis for pay, awards, development, retention, removal, and other personnel decisions.
4. AUTHORITIES. The PMS is established in accordance with the following authorities:
- a. Performance Appraisal - 5 U.S.C. chapter 43, subchapter II (Performance Appraisal in the Senior Executive Service); 5 CFR Part 430, Subpart C (Managing Senior Executive Performance).
 - b. Superior Accomplishment Awards - 5 U.S.C. chapter 45 (Incentive Awards); 5 CFR Part 451, Subpart A (Agency Awards).
 - c. Records of Employee Performance - 5 CFR Part 293, Subpart D (Employee Performance File System Records).
5. RESPONSIBILITIES.
- a. The Attorney General (AG) responsibilities:
 - (1) Managing the SES and assessing the performance for individual SES members. Setting and adjusting SES rates of pay for individual senior executives. The AG has delegated certain responsibilities as appropriate.
 - b. The Deputy Attorney General (DAG) responsibilities:
 - (1) Directs that the annual assessment of the Department's performance be conducted, issues performance evaluation guidelines, certifies that the results of the appraisal process make meaningful distinctions, and assures pay

adjustments and levels of pay accurately reflect and recognize performance and/or contribution to the Department's performance.

- (2) Approving performance appraisals for noncareer and key career executives except for SES members in the Office of the Inspector General (OIG);
- (3) Approving Superior Accomplishment Awards (Special Act or Service) for all noncareer and career executives except for SES members in the OIG; and
- (4) Approving bonus recommendations for all career executives except for SES members in the OIG.
- (5) Serving as Chair of the Department's executive Performance Review Board (PRB) established under 5 CFR 430.310.

b. Assistant Attorney General for Administration (AAG/A) responsibilities:

- (1) Providing assessment of the component's or Department's performance overall as well as each of its major program and functional areas, such as reports of the Department's Government Performance and Results Act (GPRA) goals and other program performance measures and indicators, and evaluation measures and indicators, and evaluation guidelines based, in part, upon those assessments to senior employee rating and reviewing officials and PRB members.
- (6) Certifying that (1)the senior employee appraisal process makes meaningful distinctions based on relative performance; (2)the results of that process take into account as appropriate the Department's assessment of its performance against program performance measures; and (3)pay adjustments, cash awards, and levels of pay accurately reflect and recognize both individual and organizational performance.

c. Authorized Department Official, (i.e., Component Head) with the exception of the Office of the Inspector General (OIG) responsibilities:

- (1) Setting and adjusting SES rates of pay for individual senior executives within the scope of the Department's Delegation of Authority.
- (2) Appointing SES members within their respective organizations to serve on PRBs;
- (3) Approving performance appraisals for all career SES members within their respective organizations except for certain key career executives²; and
- (3) Approving performance based reassignments for all career SES members within their respective organizations except for certain key career executives.

d. The Inspector General responsibilities:

- (1) Appointing SES members to serve on the OIG PRB;
- (2) Approving performance appraisals for all career executives in the OIG;
- (3) Approving Superior Accomplishment Awards (Special Act or Service) for all career executives in the OIG; and
- (4) Approving bonus recommendations for all career executives in the OIG.

6. DEFINITIONS

Key career executive positions at the FBI include:

- a. the positions of Executive Assistant Director, Assistant Director, Assistant Director in Charge, or General Counsel, and
- b. positions which report to the Director.

a. Annual Summary Rating. The overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.

b. Appointing Authority. The Attorney General, Department component heads, or other Department official with authority to make appointments in the SES.

c. Authorized Department Official. The Attorney General or an official who is authorized to act for the Attorney General in the matter concerned. The Department's Inspector General is the Authorized Department Official for senior executive positions in the Office of the Inspector General consistent with the requirements in section 3(a) of the Inspector General Act of 1978.

d. Award or Superior Accomplishment Award. A monetary or non-monetary award for a special contribution resulting in tangible benefits or savings and/or intangible benefits to the government.

e. Balanced Measures. An approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.

f. Component. An Office, Board, Division, or Bureau, i.e., the first major subdivision of the Department that is separately organized and clearly distinguished from other components in work functions and operation.

g. Component Head. The official who directs the administration and operations of each Office, Board, Division, and Bureau of the Department of Justice. However, for the purposes of this plan, the component head for the United States Attorneys and United States Trustees shall be the Director of the Executive Office for United States Attorneys and the Director of the Executive Office for United States Trustees, respectively.

h. Critical Element. A key component of an executive's work consisting of one or more duties and responsibilities that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

- i. Higher Level Review Official. The official who is responsible for providing a higher level review of an SES member's initial appraisal. (Typically the second level supervisor) Note: The reviewer must hold a higher level position than the rating official, but not necessarily be in the same organization.
- j. Intangible Benefits. Benefits to the Government which cannot be measured in terms of dollar savings.
- k. Initial Summary Rating. The overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.
- l. Interim Rating. An interim rating is issued to appraise employee performance during details, or during assignment to any Department PMS position in which the employee served for the minimum appraisal period during the annual appraisal cycle. The weight given to interim ratings in deriving the employee's annual summary rating should be proportionate to their share of the appraisal cycle.
- m. Minimum Appraisal Period. The minimum amount of time in which an employee must have served in a position under written performance elements and requirements in order for an appraisal to be rendered concerning such performance. The Department's minimum appraisal period is 90 days. Component heads may establish longer minimum appraisal periods.
- n. Nonmonetary Award. A medal, certificate, plaque, citation, badge, or other similar item that is given to honor an individual.
- o. Performance. The accomplishment of the work described in the senior executive's performance plan.
- p. Performance Appraisal. The review and evaluation of a senior executive's performance against performance elements and requirements.
- q. Performance Award. Performance awards, commonly called "bonuses," recognize and reward excellence of career SES appointees or a former career SES appointee who has elected to retain bonus eligibility under 5 U.S.C. § 3392(c). Specific due dates and instructions for recommending executives for bonuses will be issued by the Deputy Attorney General for each appraisal cycle.

r. Performance Management System. The framework of policies and practices established under 5 U.S.C. chapter 43, subchapter II and 5 CFR Part 430, Subpart C, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

s. Performance Requirement. A statement of the performance expected for a critical element or other element. A performance requirement may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

t. Performance Review Board. Performance Review Boards are established under the provisions of 5 U.S.C.

§ 4314(c) and shall review and evaluate the initial summary rating of a senior executive's performance by his/her supervisor, along with any response by the senior executive or higher level review determination (if appropriate), and make recommendations to the appointing authority relative to the performance of the senior executive. The appointing authority shall issue appraisals/ratings only after considering the recommendations of a Performance Review Board. The Performance Review Board must also make recommendations concerning individual performance awards (bonuses) to the Deputy Attorney General.

u. Progress Review. The review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating. Regulations require at least one progress review midway through the appraisal period.

v. Rating Levels. The plan describes five rating levels: Outstanding, Excellent, Fully Successful, Minimally Satisfactory, and Unsatisfactory.

w. Rating Official. The individual who is responsible for communicating to the employee the elements of his or her position, establishing performance requirements for those elements, appraising performance, and assigning the initial performance rating. Normally this is the employee's immediate supervisor.

x. Relative Performance. The performance of a senior employee with respect to the performance of other senior employees, including their contribution to Department performance, where appropriate, as determined by the application of a certified appraisal system.

y. Senior Executive Performance Work Plan. The written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements and any other performance elements established for the senior executive.

z. Senior Executive Resources Board. The Senior Executive Resources Board (SERB) provides overall management and control of the Department's SES. The members of the SERB are the Deputy Attorney General, Associate Attorney General, and Assistant Attorney General for Administration. The Assistant Director for Leadership Effectiveness, Personnel Staff, Justice Management Division serves as the Executive Secretary for the SERB. Additional members may be added at the direction of the Attorney General.

aa. Special Act or Service. A contribution or accomplishment in the public interest which is: (1) a nonrecurring contribution either within or outside of job responsibilities, (2) a scientific achievement, or (3) an act of heroism.

bb. Strategic Planning Initiatives. Department or component strategic plans, annual performance plans, organizational workplans, and other related initiatives.

7. TRAINING. Component heads are required to make effective use of available resources (e.g., technology, learning, information, etc.) to maximize SES employee performance. It is essential that training and information on the PMS be provided to SES employees and their managers and supervisors to assure effective administration of the PMS. Topics covered should include the Department's PMS for SES members, performance appraisal, and pay incentive programs (i.e., pay for performance and superior accomplishment awards).

8. CERTIFICATION CRITERIA. The plan incorporates the following criteria designed to guide the Department in the strategic use of the performance appraisal system to support and attain the Department's mission, goals, and objectives.

- a. Alignment - performance expectations for individual senior employees are linked to or derived from, the Department's mission, strategic goals, program/policy objectives, and/or annual performance plans.
- b. Consultation - Performance expectations are based on senior employee involvement and input that are communicated at the beginning of the appraisal period and appropriate times thereafter.
- c. Results - Performance expectations for senior employees apply to their respective areas of responsibility; reflect expected Department or Component performance; clearly describe performance that is measurable, demonstrable, or observable; and focus on tangible outputs, outcomes, milestones or other deliverables;
- d. Balance - Performance expectations for senior employees include appropriate measures or indicators of results; customer/stakeholder feedback; quality, quantity, timeliness, and cost effectiveness, as applicable; and competencies or behaviors that contribute to and are necessary to distinguish outstanding performance;
- e. Assessment and Guidelines - The Attorney General, or the AAG/A, provides assessment of the performance overall as well as each of its major program and functional areas, such as reports of the Department's GPRA goals and other program performance measures and indicators, and evaluation measures and indicators, and evaluation guidelines based, in part, upon those assessments to senior employee rating and reviewing officials and PRB members. These assessments and guidelines are provided at the conclusion of the appraisal period but before individual senior employee performance ratings are recommended, so that they may serve as a basis for individual performance evaluations as appropriate.
- f. Oversight - Rigorous oversight of the appraisal process is provided by the Attorney General or AAG/A who certifies that:
 - (1) The senior employee appraisal process makes meaningful distinctions based on relative performance;
 - (2) The results of that process take into account, as appropriate, the Department's assessment of its performance against program performance measures; and

- (3) Pay adjustments, cash awards, and levels of pay based on the results of the appraisal process accurately reflect and recognize individual performance and/or contribution to the Department's performance.

The assessment may be any official or formal organizational assessment done for the purpose of determining how well the Department and its individual components have performed during the appraisal period.

2. Accountability - Senior employee ratings (as well as subordinates' ratings for those with supervisory responsibilities) that appropriately reflect the employee's performance expectations and are clearly linked to organizational mission, GPRA strategic goals, or other program or policy objectives.
3. Performance Differentiation - The Department is using a five-level rating system for senior employees which includes a rating level that reflects outstanding performance. The appraisal process results in meaningful distinctions in relative performance based on senior employees' actual performance against rigorous performance expectations and their relative contributions to Department performance.
4. Pay Differentiation - Individual pay rates and pay adjustments, as well as their overall distribution, reflect meaningful distinctions among executives based on their relative contribution to Department's performance; The Department's highest performing senior employees must receive the largest pay adjustments and/or highest pay levels (including both basic pay and performance awards), particularly above the rate for Level III of the Executive Schedule.

9. PROGRAM EVALUATION.

- a. Reports on the Department's PMS activities will be provided to the Executive Secretary of the Department's SERB by the component heads. These reports will be used to monitor performance management activities such as rating distributions, award payouts, regulatory compliance, etc.
- b. PRBs will be responsible for providing recommendations to the appropriate appointing authority on the SES performance management system.

c. Based on this data, recommendations or required corrective actions will be developed as appropriate for implementation in the organization.

SECTION 2

PERFORMANCE APPRAISAL FOR THE SENIOR EXECUTIVE SERVICE

10. PERFORMANCE APPRAISAL PREMISES AND PRINCIPLES. The Department has adopted the following set of premises and principles to guide performance management within the SES.

- a. The Department of Justice workforce is comprised of dedicated, hardworking public servants who strive to deliver value to the American taxpayer.
- b. The Department will pursue a workforce that is fully representative of the diversity of the American people.
- c. The Department will pursue a workforce that is engaged and involved in designing a results-oriented, performance-based, and customer-focused system that delivers value.
- d. Department of Justice federal leaders and managers create a climate for excellence by communicating their vision, values, and expectations clearly, and by:
 - (1) creating an environment in which every employee may excel, regardless of race, color, religion, sex, age, national origin, disability, sexual preference, or parental status, and which is free of sexual harassment;
 - (2) creating an environment for continual learning;
 - (3) working in partnership with employees to ensure they reach their full potential;
 - (4) recognizing and rewarding excellence with financial incentives and non-financial incentives, such as increased flexibility to do jobs, more meaningful work, and achieving a sense of accomplishment; and
 - (2) taking timely action to both reward and correct performance appropriately, ensuring that excellence is the standard for all.
- e. Individuals are personally responsible for being results-oriented, performance-based, and customer-focused.

f. Leaders, managers, and employees have a mutual obligation to provide value and excellence. This requires each individual to be continually challenged to perform their best. Taking action to improve the performance of each individual and providing fair and accurate appraisals is imperative to achieving our mission.

g. The Department of Justice is committed to pursuing effective performance management.

11. PERFORMANCE APPRAISAL PERIOD.

a. The performance appraisal period for senior executives is July 1 - June 30 of the following year, unless advanced or delayed by appropriate authority.

b. If a senior executive fails to complete the established minimum appraisal period because of reassignments, change in supervisor, or other legitimate management reasons, his/her appraisal period should be extended for the minimum appraisal period at which time a rating of record should be prepared.

c. The established performance appraisal period may be terminated at any time after the minimum appraisal period is completed, if there is adequate basis on which to appraise and rate the senior executive's performance.

d. An appraisal or rating of an SES career appointee may not be made within 120 days after the beginning of a new Presidential Administration.

PERFORMANCE WORK PLANS.

a. Each senior executive must have a performance work plan (PWP) that describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated.

b. Rating officials must develop PWPs in consultation with senior executives and communicate (in writing) the plans to the executives on or before the beginning of the appraisal period.

c. The PWP for career and noncareer SES members will be

-34-

written in a standard/generic format with at least three critical elements to ensure alignment with Departmental goals.

a. Elements must reflect individual and organizational performance. They can be either capsulized aspects of the most important duties and responsibilities associated with the SES position or specific projects or tasks which can be logically inferred from the duties and responsibilities cited in the employee's position description. Accomplishment of organizational objectives MUST be included in PWP's by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

b. Before or at the outset of the rating period (usually within 30 days) or, in the case of an executive entering a new position, as soon as possible (but no later than 30 days) after entry into the position, a PWP must be either developed or reviewed for continued appropriateness and the elements and performance requirements covered by the PWP communicated to the executive.

c. Final authority for establishing the elements and requirements rests with the rating official. However, the PWP can be modified, as appropriate, at any time during the appraisal period to reflect changing priorities or shifts in workload. Component guidance may require a second level review of SES PWP's.

12. PERFORMANCE REQUIREMENTS.

a. Like critical elements, performance requirements must be consistent with the goals and performance expectations in the Department's strategic planning initiatives.

b. Performance requirements MUST be written at the Fully Successful level. They may also be written at additional levels consistent with component level guidance. These requirements are the standards against which the senior executive's performance will be appraised.

c. The absence of a written performance requirement at a given level does not preclude the assignment of a rating at that level.

13. REVIEW OF PERFORMANCE WORK PLANS.

- a. A higher level review of all SES ratings to ensure appropriate levels of quality and difficulty of performance requirements within each SES PWP and in SES PWPs across the component is encouraged, but not required.
- b. The SERB will ensure that the review process across the Department is fairly managed. These reviews may be made during the appraisal process or at such other times as deemed appropriate.

14. PROGRESS REVIEWS.

- a. Component heads and supervisors must monitor each senior executive's performance during the appraisal period and provide ongoing, timely, and honest feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan to sustain and reinforce expected performance.
- b. A progress review shall be held for each SES member at least once during the appraisal period. At a minimum, senior executives must be informed about how well they are performing including their level of performance by comparison with the elements and performance requirements established for their positions.
- c. Supervisors must provide advice and assistance to senior executives on how to improve their performance.
- d. If either the rating official or the executive feels that modifications to previously established elements or performance requirements are warranted because of unforeseen shifts in workload or changes in priorities, he/she must be prepared to discuss possible alternatives. If the rating official feels that performance in one or more of the established elements is lacking, he/she should discuss possible corrective actions as well as the ramifications of unimproved performance. The progress review should not be viewed solely as a discussion of performance weaknesses or deficiencies, but also serve as a forum for encouraging employees whose performance is Fully Successful or Excellent to strive for even greater achievement.

e. If modifications in either elements or requirements are warranted, they must be discussed and recorded during the review process. At the end of the review session, both the rating official and the executive should share a common understanding of where the employee stands in relationship to his/her PWP, what is expected of the employee through the remainder of the rating period, and what actions, if any will be initiated as a result of performance to date. The executive and the rating official each sign and keep a copy of the PWP, acknowledging that the progress review was conducted and reflecting any modifications in the elements or requirements.

15. APPRAISING PERFORMANCE.

a. If an SES member has served in his/her current position under written performance elements and requirements for the established minimum appraisal period when the performance appraisal cycle ends (June 30 of each year), and there is adequate basis on which to rate the senior executive, the employee must be rated as soon as practical after the end of the appraisal period on the appropriate performance appraisal record.

b. Each executive must be appraised on each element of the PWP, unless the employee has had insufficient opportunity to demonstrate performance on the element. On the rating date or as soon as possible thereafter, the rating official should be prepared to compare the overall achievements of the employee with respect to each element and performance requirement based on personal knowledge and a summary of accomplishments provided by the rated executive.

c. The rating official should then briefly summarize in narrative fashion the achievements of the executive against each performance requirement established for the elements. Rating officials have the option of summarizing in a narrative fashion the achievements of the executive against the performance requirements established for the job elements, or to provide narrative comments only for rating levels to be assigned that are not described in the executive's PWP.

d. Appraisals of senior executive performance must be based on both individual and organizational performance, taking into account such factors as:

- (1) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993;
- (2) Customer satisfaction;
- (1) Employee perspectives;
- (2) The effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and
- (3) Meeting equal employment opportunity, and diversity goals and complying with the merit system principles set forth under section 2301 of title 5, United States Code.

e. The supervisor will assign individual element ratings as follows:

- (1) Outstanding. Performance on an individual critical element of the job which clearly demonstrates a level of achievement which exceeds to an exceptional degree the performance requirements for Fully Successful. Performance at this level so exceeds what is normally required of the job that it is deserving of special recognition.
- (2) Excellent. Performance on an individual critical element which markedly exceeds the performance requirements for Fully Successful.
- (1) Fully Successful. Performance on an individual critical element of the job which completely meets, or exceeds to a limited degree, the performance requirements for Fully Successful established at the beginning of, or modified during, the rating period.
- (2) Minimally Satisfactory. Performance on an individual critical element of the job which just falls short of the performance requirements for Fully Successful. Performance at this level shows significant deficiencies that require correction.

- (3) Unsatisfactory. Performance on an individual critical element of the job which is substantially below the performance requirements for Fully Successful. Usually the employee's performance will show serious deficiencies in terms of quantity, quality, timeliness of work, or manner of performance.

16. INITIAL SUMMARY RATING.

a. The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive.

b. The supervisor will assign an initial summary rating level as follows:

- (1) Outstanding. A majority of the critical elements must be rated Outstanding; no critical element may be rated less than Excellent.
- (2) Excellent. A majority of the critical elements must be rated Excellent or higher and no critical element may be rated less than Fully Successful.
- (3) Fully Successful. A majority of the critical elements must be rated Fully Successful or higher; no more than one critical element may be rated Minimally Satisfactory.
- (4) Minimally Satisfactory. More than one critical element must be rated Minimally Satisfactory and no critical element may be rated Unsatisfactory.
- (5) Unsatisfactory. Performance in one or more critical elements must be rated Unsatisfactory.

17. RIGHT TO RESPOND IN WRITING AND REQUEST HIGHER LEVEL REVIEW.

a. Senior executives in the Department are entitled to one higher level review, unless the component provides for more than one review level.

b. At the time of rating, the rating official shall advise the senior executive of his or her right to respond in writing to any aspect of the rating and to have that rating (along with the written response, if any) reviewed at a higher executive level, i.e., higher organizational level.

c. If the senior executive chooses to exercise his or her right to respond or seek higher level review, such response must be made to the rating official within 7 calendar days.

18. HIGHER LEVEL REVIEW.

a. After any initial discussions are completed and the written response, if any, to the initial summary rating is received, the rating official will, upon request of the executive, forward the completed rating form to the appropriate reviewing official (normally the next higher official in the supervisory chain) for the higher level review.

b. The higher level official cannot change the supervisor's initial summary rating, but may recommend a different rating to the PRB and the appropriate appointing authority.

c. Both the executive and the rating official must be given copies of the reviewer's findings and recommendations.

d. After the higher level review is completed, the appraisal package (the rating and accompanying documentation, including the higher level review's comments and recommendation, if any) will be forwarded to a PRB for review.

19. PERFORMANCE REVIEW BOARD REVIEW.

a. The PRB must review the rating and comments from the senior executive and the higher level official, if any, and make recommendations to the appropriate appointing authority.

b. The PRB will consider the material forwarded and make a written recommendation to the appropriate appointing authority regarding the annual summary rating to be assigned as well as any related matters such as performance pay, basic pay rate adjustments, performance awards, reassignments, and

removals. (See Appendix 1 for the Establishment and Functions of the Department of Justice SES PRBs.)

20. ANNUAL SUMMARY RATING.

- a. The appropriate appointing authority will make the final decision in writing regarding the annual summary rating to be assigned and related personnel recommendations after considering any PRB recommendations.
- b. The annual summary rating approved by the appropriate appointing authority is final and becomes the executive's official rating. Senior executive performance appraisals and ratings are not appealable.
- c. One copy of the approved rating form must be provided to the employee; another copy may be retained by the rating official; and a third copy will be forwarded to the servicing personnel office for retention in the Official Personnel File (OPF) or Employee Performance File (EPF).
- d. Personnel actions resulting from the annual summary rating must be promptly initiated by the rating official.

21. DETAILS AND JOB CHANGES.

- a. Position Changes Within the Department. When an executive occupies two or more positions in the Department during the appraisal cycle (in which the executive served under written elements and performance requirements for the minimum appraisal period) an interim rating must be prepared. This interim rating, along with the PWP upon which it was based, must be forwarded to the new supervisor for inclusion in the rating of record due at the end of the appraisal cycle. The weight given to this interim rating should generally be proportionate to its share of the appraisal period. When such interim ratings are used to develop a rating of record, both the interim ratings and the PWPs upon which they are based must be attached to the final annual summary rating.
- b. Temporary Assignments Within the Department. If the senior executive is detailed or temporarily reassigned WITHIN the Department and if the assignment is expected to last the

minimum appraisal period or longer, written critical elements and performance requirements MUST be provided to the employee and an interim rating must be prepared based on the performance during the assignment. The weight given to this interim rating in preparing the rating of record should generally be proportionate to its share of the appraisal period.

c. Temporary Assignments Outside the Department. If the employee is temporarily assigned OUTSIDE the Department, reasonable efforts must be made to obtain appraisal information from the outside organization which will be considered in deriving the employee's next summary rating. Accordingly:

- (1) If the employee has served in the Department for the minimum appraisal period, the employee must be rated. The rating of record shall take into account appraisal information obtained from the borrowing organization; or
- (2) If the employee has not served IN the Department for the minimum appraisal period, but has served for the minimum appraisal period in a position OUTSIDE the Department, reasonable efforts must be made to prepare a rating of record using appraisal information obtained from the borrowing organization.

d. Transfers From Other Agencies. If an employee transfers from another agency into the Department during the appraisal cycle, any interim or summary rating(s) which are forwarded from the losing agency (and which encompass periods of time included in the Department's appraisal cycle) MUST be considered in deriving the rating of record. Weight given to these ratings should be proportionate to their share of the appraisal cycle.

e. Transfers To Other Agencies. If an executive transfers to a new agency at any time during the appraisal period, a summary (interim) rating must be prepared by the employee's supervisor and provided to the gaining agency.

22. PROCESSING AND RETENTION OF PERFORMANCE RATINGS.

a. Control dates established by Departmental guidance must be adhered to in order to ensure the proper review of ratings by PRBs.

b. All performance related records must be maintained in either the OPF or EPF for no less than 5 years from the date the rating is issued.

c. The performance appraisals for the most recent 5 years and the most recent PWP and interim rating will be forwarded as part of the OPF to a gaining agency upon an employee's transfer. (Note: The FBI is exempt from the requirement to release performance plans and appraisals.)

23. VALIDITY OF RATINGS.

a. Each final annual summary rating issued within a component of the Department (or other agency which is subject to the performance appraisal requirements of 5 U.S.C. chapter 43, subchapter II) supersedes the previous one and is considered to be the valid rating of record.

b. When a new SES employee enters on duty with the Department at any time during the appraisal period, the most recent annual summary rating rendered in the former agency will be recognized as the official rating of record until it is superseded by a rating of record issued under this plan.

SECTION 3

ACTIONS BASED ON LESS THAN FULLY SUCCESSFUL PERFORMANCE

24. GENERAL.

- a. 5 CFR § 430.306(a) requires that supervisors must advise and assist employees in improving their performance.
- b. Any SES member receiving an Unsatisfactory rating shall be reassigned or transferred within the SES or removed from the SES. However, any SES member who receives two Unsatisfactory ratings within any period of 5 consecutive years shall be removed from the SES.
- c. A Minimally Satisfactory rating permits a year's period to show improvement. However, any SES member who receives two less than Fully Successful ratings within 3 consecutive years shall be removed from the SES.
- d. When an employee's performance falls below Fully Successful (whether or not a formal appraisal has been given), good personnel practice suggests that this determination should trigger prompt action on the part of the supervisor to bring the employee's performance up to an acceptable level or, if warranted in the case when an employee is Unsatisfactory, to begin steps leading to the placement of the employee in a job he or she can successfully perform. Exactly what steps should be taken depends on the circumstances of the case.
- e. Formal training, on-the-job training, counseling, and closer supervision are common approaches to below par performance problems. An organization has no justification, however, for continuing to retain an employee whose performance is Unsatisfactory after attempts to improve the employee's performance or place him or her in another position fail.

25. PROCEDURES. Since performance appraisal is a continuous process, the following procedures shall be followed at any time during the year after the minimum appraisal period has been completed when a supervisor concludes that the employee's performance in one or more critical elements is below Fully Successful.

- a. Discussion. There must be a discussion between the supervisor and the employee for the purpose of:
- (1) Advising the employee of specific shortcomings between observed performance in the critical element(s) under scrutiny and the performance requirements associated with the particular element(s); and
 - (2) Providing the employee with a full opportunity to explain the observed deficiencies.
- b. Determine Appropriate Action.
- (1) If the supervisor feels that the matter has been resolved to his or her satisfaction during the course of the discussion, the supervisor need not take further formal action at this point.
 - (2) If the supervisor of the senior executive feels that further action is necessary, he or she shall complete an appraisal and record his or her assessments on the rating form. The supervisor shall advise the senior executive of his or her right to respond in writing within 7 calendar days and of the action he or she is recommending with respect to the proposed Minimally Satisfactory or Unsatisfactory rating. The supervisor should also advise the senior executive of the review levels required before the rating and proposed action become final, i.e., a possible review by a higher level official, the PRB, and, ultimately, the Deputy Attorney General or component head as appropriate. The senior executive should also be advised that the rating and proposed action do not become final until the Deputy Attorney General's/component head's decision is made.
 - (3) If a first-time rating of Minimally Satisfactory is approved by the Deputy Attorney General/component head, it does not carry with it any legally mandated personnel action. However, as a practical matter, such a rating should carry with it a recommendation reflecting the marginal performance it represents. Recommended actions that the rating official may wish to consider include: (1) a reduction in SES pay

(limited by OPM regulation to one level within a 12-month period); (2) additional training designed to correct the deficient performance; or (3) reassignment to another SES position.

(4) A career appointee may be reassigned to another SES position only if the appointee receives at least 15 days advance written notice for a reassignment within the commuting area and at least 60 days advance written notice for a reassignment outside the commuting area. The appointee may voluntarily waive the above notices. Such waivers must be in writing.

(5) If the Unsatisfactory rating is approved by the Deputy Attorney General/component head, the senior executive must be reassigned to a different position within the SES or removed from the SES in accordance with the provisions of 5 CFR Part 359, Subpart E.

(i) A career appointee may be removed from the SES at any time prior to the completion of the probationary period required under 5 U.S.C. § 3393. However, a career appointee who has completed the probationary period and whose removal from the SES for less than Fully Successful executive performance is contemplated is entitled, to a 30-day advance written notice of such action (see 5 CFR § 359.502). In addition, upon request, the career appointee shall be granted an informal hearing before an official designated by the Merit Systems Protection Board at least 15 days before the effective date of the removal. At this time, the career appointee may appear and present arguments. Such hearing shall not give the career appointee the right to initiate an action under 5 U.S.C. § 7701 (formal appellate procedure) nor need the removal action be delayed as a result of the granting of such hearing. A career appointee who is removed from the SES for less than Fully Successful performance is entitled to be placed in a civil service position (other than an SES position) in accordance with the provisions of

5 U.S.C. § 3594.

(i) The removal of an SES career appointee for performance reasons is subject to the

120-day moratorium, except for a removal based on an unsatisfactory rating given before the appointment of a new agency head or noncareer supervisor that initiated the action. This includes an optional removal based on one unsatisfactory rating, a mandatory removal based on two unsatisfactory ratings in 5 years, and a mandatory removal based on two less than fully successful ratings in 3 years when the second rating is an unsatisfactory rating.

(6) SES noncareer and limited appointees may be reassigned or removed from the SES at any time. Such SES members are not entitled to the procedures described in subparagraphs (b)(5) i-ii above. Regulations require that noncareer and limited appointees receive notice in writing before the effective date of a removal (See 5 CFR Part 359, Subpart I.).

APPENDIX TO DOJ SES PMS PLAN

ESTABLISHMENT AND FUNCTIONS OF THE DEPARTMENT OF JUSTICE SES PERFORMANCE REVIEW BOARDS

1. GENERAL. Under the provisions of 5 U.S.C. § 4314(c), each agency is required to establish one or more SES Performance Review Boards (PRBs) which shall review and evaluate the initial appraisal of a senior executive's performance by his/her supervisor, along with any response by the senior executive or higher level review determination (if appropriate), and make recommendations to the appointing authority relative to the performance of the senior executive. The appointing authority shall issue appraisals/ratings only after considering the recommendations of a PRB.

2. ESTABLISHMENT OF BOARDS. Component heads will jointly establish one or more PRBs to review ratings and bonus recommendations of the executives within their appointing authority. There will be a sufficient number of PRBs established to review, evaluate, and make recommendations with respect to the individual performance of the senior executives in the component.

3. MEMBERSHIP.

a. Each PRB is composed of three or more members. The size of the PRB will depend upon the number of actions to be reviewed..

b. The Department establishes a standing PRB member list comprised from Department career SES appointees. Each year, the Assistant Attorney General for Administration shall provide updates to the list of new Department SES members that are eligible to serve on standing PRBs. A PRB member's name will be published in the Federal Register before their service begins. Those individuals on the list can serve until they have left the SES. Executives from Federal Bureau of Investigation and the Drug Enforcement Administration are exempt from publishing their executive's names for security reasons, but can serve as members on any Department of Justice PRB.

c. The components have flexibility in determining who from the list will serve on their PRB(s) (including the chairperson).

d. Members of PRBs are appointed in such a manner as to assure consistency, stability, and objectivity in reviewing performance appraisals.

e. Members of each PRB shall:

- (1) Be career SES members (or equivalent);
- (2) Have current Fully Successful performance ratings or above;
- (3) Consistently apply Department appraisal systems effectively in their respective organizations; and
- (4) Possess a thorough knowledge and understanding of the performance appraisal system and other pertinent aspects of the SES.

f. Appointees will not serve on the PRB reviewing the actions of their own organizations. Accordingly, the supervisory official who made or reviewed the initial appraisal of an executive may not act as a member of the PRB considering the appraisal of that subordinate executive. In addition, a subordinate to an executive whose performance appraisal is under review may not act as a member of the PRB with respect to his or her superior. No senior executive may review his/her own rating. A member of a PRB in conflict with the above will remove himself or herself from action or consideration by the PRB and such action/consideration will be accomplished by other PRB members.

4. FUNCTIONS.

a. Each PRB shall review and evaluate the initial appraisal and rating by the rating official of the senior executive, the senior executive's written response (if any), and the written comments of the reviewing official (if such written comments were made), and any accompanying recommendations for awards, bonuses, proposed corrective

actions, or the like. In its consideration of a case, a PRB may call witnesses if it feels added clarification is needed. Each PRB shall consider equity and consistency among the ratings of executives as well as the accuracy, fairness, and effectiveness of individual ratings. A primary goal of the review is to ensure that final ratings above the Fully Successful are awarded only to senior executives whose performance fully justifies them. A PRB may review any aspect of the appraisal process, including the critical elements and performance requirements set for a senior executive prior to or as adjusted (modified) during the performance appraisal period.

b. PRB recommendations shall be in writing and shall be submitted under signature of the PRB chairperson, along with the proposed rating and accompanying documentation, to the appropriate appointing authority. Where the PRB does not concur with the initial appraisal or rating, or the record shows employee or reviewing official disagreement with the rating official's actions, the PRB's recommendations shall be supported by a written justification. No appraisal or rating is final until the appropriate appointing authority takes final action. As has been indicated earlier, a PRB is also responsible for reviewing or making recommendations to the appointing authority concerning individual performance actions such as bonuses for career SES appointees or pay increases for career and noncareer SES appointees.

CHAPTER VII. PAY FOR THE SENIOR EXECUTIVE SERVICE

- A. SALARY LEVELS for the SES are established as a function of personal qualifications, individual and organizational performance, and the duties and responsibilities of the position held by the senior executive, and DOJ guidance. The SES pay band has a floor equal to 120% of GS 15, step-1, and a ceiling of Executive Level II. During periods when the DOJ pay-for-performance system is not certified by the Office of Personnel Management and Office of Management and Budget, the payband will be limited to Executive Level III. Decisions affecting pay levels for those members in key executive positions must be confirmed by the Deputy Attorney General prior to being made final.
- B. SETTING INDIVIDUAL PAY RATES.
1. Initial Salary Level. The Director will establish an initial salary which reflects up to a 10% increase over pre-SES salary. In instances where a greater increase is warranted, the Director may seek a waiver from the Deputy Attorney General.
 2. Pay Adjustments. The DOJ will conduct a salary review of all senior executives on at least an annual basis. Recommendations for merit based salary increases will be provided by the Director.
 - a. Lowering a senior executive's pay. A senior executive's pay may be lowered as the result of poor performance or conduct.
 - b. Pay Computation. To compute the hourly rate of an SES employee, divide the annual rate by 2,087 (5 CFR 534.404).
 - c. Premium Pay. SES members are excluded from all forms of premium pay, including overtime, Sunday and holiday pay rates, night, standby, irregular and hazardous duty differential, and compensatory time off (5 U.S.C 5541(2)(xvii)).
- C. AWARDS.

1. Presidential Ranks. SES career appointees may be awarded one of two Presidential ranks for sustained superior performance, Distinguished Rank or Meritorious Rank. The Director will receive recommendations for candidates for these ranks from the Deputy Director and other high ranking heads of offices and divisions. The recommendations take into account an individual's performance over a period of three years in the SES. The Director will forward recommendations to the Attorney General who will make final nominations to the President.

The President may award to any SES career appointee nominated by the Attorney General the rank of:

- a. Distinguished Executive for sustained extraordinary accomplishment, or
- b. Meritorious Executive for sustained accomplishment.

An SES appointee who receives a rank of either Distinguished or Meritorious Executive shall not be entitled to receive that same award during the following four years. A Distinguished rank award winner cannot receive a performance award in the same calendar year.

A career SES member awarded a Distinguished or Meritorious rank will receive a monetary award consistent with the appropriate rank (5 U.S.C. \$4507), currently 20% of basic pay for Meritorious and 35% of basic pay for Distinguished. A Distinguished rank may be awarded to no more than one percent of the total number of SES members. A Meritorious rank may be awarded to no more than five percent of the total number of SES members.

2. Performance Awards (Bonuses) may be paid to a limited number of executives who demonstrate exceptional performance in attaining organizational goals. Eligibility for performance bonuses is determined during the annual performance appraisal process. All career SES members rated at least Fully Successful in all critical elements may be recommended by the Director to the Deputy Attorney General for a performance award of between five and 20 percent of the senior executive's basic pay. Funding for performance awards granted in any fiscal year

is based on three to ten percent of the aggregate salary of career appointees as of the end of the preceding fiscal year. A career SES member may receive only one such award for performance in a single year.

3. Incentive Awards. Incentive awards, including time-off, significant accomplishment, and on-the-spot awards recognize contributions resulting in tangible or intangible benefits or savings. These awards are designed to improve government efficiency, economy and effectiveness by motivating and rewarding employees for efforts which benefit the government. Senior executives are normally exempt from monetary Incentive Awards in lieu of their eligibility to receive performance awards as described in item #2, above. Executives remain eligible for recognition under the Suggestion, Director's Awards, and Attorney General's Awards Programs.

- a. Basis. Awards may be based on contributions such as suggestions, inventions, or special acts or service in the public interest connected with or related to official employment.

- b. Form of recognition. An incentive award may be either monetary or non-monetary. A non-monetary award could be in the form of a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

- c. Approval. Recommendations for executive Incentive Awards must be submitted in writing to the SES Board. Such recommendation must clearly identify the unusual nature of the accomplishment and why the achievement qualifies for recognition outside of the performance award process. In addition to approval by the SES Board, final concurrence/approval of the Director and the Department of Justice is also required.

- D. LIMITATION ON SALARY. The aggregate amount of pay that a member of the SES may receive during any calendar year may not exceed the salary limitation described in 5 U.S.C. §5307. Included in the determination of aggregate pay are: base pay; locality adjustment; recruitment and relocation bonuses; retention allowance; performance awards and rank awards. Any

excess amount (excluding retention pay) will be paid in a lump sum amount at the start of the next calendar year. Monies received from bonuses, rank or performance awards are not included in computing an SES member's retirement pay.

CHAPTER VIII. EXECUTIVE DEVELOPMENT

- A. EXECUTIVE DEVELOPMENT PROGRAM. Employees will be provided progressive developmental opportunities prior to, and following, entry into the SES. The Director will ensure that funding and staffing, sufficient to support this policy, are available.
1. Program Management. Overall management of the SES development program will be provided by the SES Board.
 2. Monitoring. The SES Board will have responsibility for establishing an executive development program. The program for SES incumbents will encompass developmental experiences which, through continuing short-term opportunities and periodic involvement in more extended programs, will:
 - a. Help meet organizational needs for managerial improvements and increased productivity;
 - b. Help the individual keep up to date in professional, technical, managerial, social, and political areas;
 - c. Meet the need for intellectual and personal growth; and
 - d. Include provisions for executive sabbaticals for carefully selected members. Members of SES will be responsible for continuing to develop their executive knowledge, skills, and abilities and for fostering the development of their subordinates.
- B. SABBATICALS. A sabbatical may be granted to any career appointee in the SES by the Director/Deputy Attorney General. Sabbaticals are granted to permit a career appointee to engage in study or uncompensated work experience which will contribute to the individual's development and effectiveness. A sabbatical may not exceed 11 months nor may it result in the loss of, or reduction in, pay or leave to which the career appointee is otherwise entitled. The Director or designee may authorize travel expenses and per diem allowances if these are deemed essential for the study or experience.

1. Eligibility. A sabbatical may not be granted to any career appointee:

a. More than once in any ten year period;

b. Unless the appointee has completed seven years of service:

(1) In one or more positions in the SES;

(2) In one or more positions in the civil service, the level of duties and responsibilities of which are equivalent to those of SES positions; or

(3) In any combination of such positions except that not less than two of the seven years of service must be in SES; and

c. If the appointee is eligible for voluntary retirement with a right to an immediate annuity.

2. Service Agreement. The career appointee accepting a sabbatical must agree to serve in the civil service upon the completion of the sabbatical for a period of two consecutive years. If the career appointee fails to meet this agreement (except for sufficient reason as determined by the Director/Deputy Attorney General or designee who granted the sabbatical), the appointee shall be liable to the United States for all expenses, including salary, of the sabbatical.

3. Employment Provisions. While an individual is on a sabbatical:

a. The individual continues to receive his or her SES salary;

b. The individual continues to earn leave and is charged for any leave taken; and

c. The individual remains subject to the SES performance appraisal system, but should be evaluated against standards appropriate to activities involved in the

sabbatical. It would not be appropriate to award a bonus for performance during the sabbatical.

CHAPTER IX. MISCELLANEOUS PROVISIONS

- A. TRAVEL EXPENSES of SES candidates may be paid by the FBI pursuant to the applicable provisions of the MAOP if these expenses are incurred incident to pre-employment interviews requested by the FBI.
- B. ANNUAL LEAVE accrued by individuals after entry into the SES is subject to a limit of 720 hours in accordance with Title 5 U.S.C., Section 6304 as amended by Public Law 103-356, 10/13/94. Any employee who became a member of the FBI SES prior to 10/13/94 may be entitled to an adjusted annual leave ceiling and should contact the PRAU or the Employee Benefits Unit.

Effective October 31, 2004, the Workforce Flexibility Act of 2004 provides that all members of the FBI SES will accrue eight hours of annual leave per pay period regardless of their total number of years of federal service.

When an employee moves into an SES appointment, any annual leave at the time of the move in excess of the employee's maximum accumulation level (normally 240 hours) is subject to forfeiture if not used by the beginning of the leave year immediately following entry into the SES, unless restored under conditions provided by 5 U.S.C. Section 6304(a)-(d). The annual leave which is not subject to forfeiture and the annual leave which accrues while serving in the SES are carried forward into subsequent leave years up to the limit of 720 hours. Once the 720 hour limit is reached, any additional annual leave accrued must be used by the end of the leave year in which accumulated or forfeited, unless restored under conditions provided by 5 U.S.C., Section 6304(a)-(d).

If an individual moves from an SES appointment to a non-SES appointment, any annual leave in excess of that which otherwise would be permitted remains to the individual's credit. Subsequently, if the individual uses more annual leave in a leave year than earned, the balance carried forward will become the new leave ceiling if it is still above the maximum limit permitted for the position.

C. LAST MOVE HOME EXPENSES. Individuals transferred to accept a position in the SES or SES members who are transferred in the interest of the Government from one official station to another for permanent duty during or after five years preceding retirement eligibility are authorized travel, transportation and moving benefits as provided in 5 U.S.C. Sec 5724(a) (3).

D. FURLOUGHS.

1. Definition. "Furlough" means placing a career appointee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reason.

2. Short furloughs.

a. A short furlough is one that will last for 30 consecutive calendar days or less (or for 22 workdays or less if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough.

b. Competitive procedures are not required in selecting the SES appointees to be furloughed for short periods. Selections will be made for sound management reasons.

3. Long furloughs.

a. A long furlough is one that will last for more than 30 consecutive calendar days (or for more than 22 workdays if the furlough does not cover consecutive days) within a 12-month period beginning on the first day of the furlough. The furlough may not exceed one year.

b. An SES appointee may be furloughed for more than 30 days only when the FBI intends to recall the appointee to a duty status with pay within one year from the beginning of the furlough. A furlough shall not be used when the executive will have to be separated through a RIF action when the furlough terminates.

c. Competitive procedures, developed for competition for job retention under a RIF, will be used in selecting SES career appointees for long furloughs of more than 30 days.

4. Notice requirements.

a. The career appointee will be given written notice at least 30 calendar days before the effective date of the start of the furlough. The notice will include the following information:

(1) The reasons for the decision to take the furlough action.

(2) The expected duration and the effective dates of the furlough.

(3) The basis for selecting the appointee for furlough when some, but not all, SES appointees in a given organizational unit are being furloughed.

(4) The place where the appointee may inspect the regulations and records pertinent to the action.

5. Appeal Rights. An employee may appeal a furlough decision by writing to the Director within 20 days of the effective date of the furlough.

E. TRAINING. Career appointees will be informed of the goals and objectives of the FBI SES. Additional training opportunities may be recommended by an executive's immediate superiors, the SES Board, or self initiated by the executive with approval of an immediate superior.

F. REPORTS AND EVALUATION. The FBI will report to the Department of Justice such information, and take such corrective action, as the Attorney General may direct as a result of his/her oversight responsibilities.

G. EXTENSION BEYOND MANDATORY RETIREMENT. The Attorney General has delegated to the Director of the FBI, the authority to grant exceptions to mandatory retirement for FBI law enforcement members of the SES. These exceptions may be granted to a limited number of individuals -- no more than 20 individuals at any given time -- whose continued service would be in the public interest and promote the mission of the FBI.

PROCEDURAL PROTECTIONS

(1) This Statement of Proposed Action provides you thirty calendar days' advance written notice of the proposed action.

(2) You may contact and use an attorney to assist in the disciplinary matter, subject to limitations imposed by law and regulation regarding the disclosure of classified or sensitive information. The FBI will not be responsible for payment of any attorney's fee or other expense you incur in connection with an attorney's representation of your interests associated with a disciplinary matter or an appeal of a disciplinary sanction.

(3) You have ten calendar days from the date of receipt of this notice to make a written request to review the material which was relied upon by OPR's proposing official. Copies of such material will be redacted in accordance with civil discovery policy and procedures. These documents are the property of the FBI and will be made available for review for a reasonable amount of time by you and/or your attorney within the FBI office space and control. You may take notes, but you may not make copies.

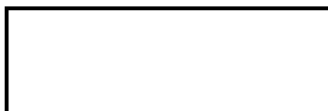
(4) You and/or your attorney may provide a written response to the proposed action. Your written response may include affidavits or other documents of choice, and it may identify witnesses or documentary sources of exculpatory evidence.¹ Your written response must be submitted within ten calendar days after your receipt of the proposed action or after you have been provided access to the material described in (3) above, whichever occurs later. Due to mail delays associated with security procedures, you must send your response by facsimile to OPR, Adjudication Unit [I or II] [redacted] at [redacted] or [redacted] or by email to Unit Chief [redacted] at [redacted].

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b7E -4

OPR
boilerplate

¹ You are admonished not to discuss this matter with anyone other than the Inspection Division's Internal Investigations Section (IIS), OPR, the Human Resources Branch's Office of Disciplinary Appeals (ODA), the Security Division, the FBI's Employee Assistance Program, the FBI's Ombudsman, or an attorney who has signed the appropriate Nondisclosure Agreement. Neither you, your attorney, nor anyone acting on your behalf should contact any witness or potential witness about this inquiry without first obtaining approval from IIS (during the investigative stage of the proceedings), OPR (during the adjudicatory stage of the proceedings), or ODA (during the appeal). This prohibition applies to persons from whom you would like to solicit a character reference. If you would like OPR to consider a character reference, provide the undersigned OPR Unit Chief with the person's name, position, and contact information. OPR will determine whether a character reference from the listed individuals would enhance the investigative record and, if so, OPR will solicit the character reference. Absent exceptionally compelling circumstances, OPR will not solicit a character reference from a subordinate on behalf of a supervisor. If you believe additional witnesses need to be interviewed or other additional evidence needs to be obtained, you may direct that request to IIS (during the investigative stage of the proceedings) or include the request in your written response to OPR (during the adjudicatory stage of the proceedings). **If you contact any witness or potential witness during the adjudicatory stage without OPR permission, you can expect to be referred to IIS for Obstruction of Administrative Matter. If counsel does so, counsel and counsel's firm can expect to be prohibited from reviewing the investigative file, submitting a written response, and participating in the oral presentation to OPR.** In addition, you are admonished that any redacted materials or other FBI documents you review in connection with this inquiry are the property of the FBI, and you are prohibited from photocopying or removing such documents from FBI space. You may take notes concerning the content of such material, but those notes may be used only to facilitate your participation in this disciplinary inquiry and for no other purpose.

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FBI 18-cv-01766-1606

(5) In addition to, or in lieu of, submitting a written response, you may request an oral presentation which, at your election, will be made telephonically, in person, or by video teleconference to the Assistant Director of OPR. You must request an oral presentation, in writing, within ten calendar days after your receipt of the proposed action or after you have been provided access to the material described in (3) above, whichever occurs later. Upon receipt of your written request for an oral presentation, OPR will provide you at least fifteen days' notice of the presentation date. If you are submitting a written response in addition to making an oral presentation, the oral presentation will be scheduled for a date after the deadline date for OPR's receipt of your written response. During your presentation, you and/or your attorney may present oral testimony or evidence, including any information, affidavits, and other documentation deemed pertinent to your case. The testimony of witnesses is not allowed. Any travel and/or attorney costs incurred as part of your oral presentation are your responsibility. For WebTA, employees in duty status may treat a reasonable amount of file review time, and the time spent during the oral hearing, as part of their official duties and record it as regular hours. Employees in duty status may also treat up to one hour prior to the hearing and up to one hour after the hearing as part of their official duties if that time is actually spent preparing for the hearing or discussing the hearing with counsel. Employees in non-duty status are not entitled to use official time to review their file or attend their oral presentation.

(6) You will receive a written decision letter from the AD, OPR, after consideration of any oral and written responses to the proposed action, fully stating the reasons for the decision. This decision letter will be delivered to you as soon as practicable following completion of the disciplinary process described above.

Will, Candice M. (DO) (FBI)

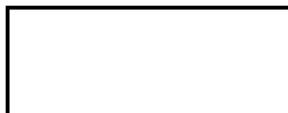
From: Will, Candice M. (DO) (FBI)
Sent: Friday, March 09, 2018 10:25 AM
To: Schools, Scott (ODAG) (JMD)
Subject: 263 File

Good morning, Scott,

We are going to deliver the redacted 263 (FBI disciplinary) file to you now. They redacted almost nothing. Our letter is fine. Some of the redactions, largely one or two words, came out of the statements of former GC Jim Baker, ADIC NY Bill Sweeney, and former COS Jim Rybicki. We did not cite or rely on Sweeney or Rybicki at all. We have only the briefest mention of Baker and what we mention was confirmed by other unredacted witnesses (e.g., Comey and Page), plus what we mention about Baker has nothing to do with the one or two words that were redacted. Finally, the only other thing redacted was the telephone numbers on the toll records and texts -- the actual phone numbers were taken out, but not the content. In some, you can still tell who the recipient was because the recipient's name or email address appears. In any event, during the interviews, various people (e.g., McCabe, Page) were confronted with these records and they confirmed (or at least did not deny) that these were their communications. The file is on its way. Counsel comes in to start their review at 11am in our offices.

Candice

263D-HQ-



41

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b7C -1

WILL, CANDICE M. (OPR) (FBI)

From: [redacted] (OPR) (FBI)
Sent: Monday, March 05, 2018 6:53 AM
To: [redacted] (DO) (FBI); [redacted] (DO) (FBI)
Cc: WILL, CANDICE M. (OPR) (FBI); [redacted] (OPR) (FBI)
Subject: Front Office Phones (03/05/2018,@6:30 a.m) --- UNCLASSIFIED

b6 -1
b7C -1

SentinelCaseId: NON-RECORD

Classification: UNCLASSIFIED
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Good morning All ☺

FYI:

Front office phones checked (03/05/2018,@6:30 a.m.)
On Friday, March 2, 2018,@10:40 a.m., Mr. Michael Bromwich called for
AD, Will and would like for you to give him a call on Monday (today)
when you get a minute [redacted] Also [redacted]
[redacted] Names have been placed on OPR's
Calendar. Praying you have a blessed and amazing day on purpose ☺

b6 -1,3
b7C -1,3

Peace & Blessings
[redacted] b6 -1
b7C -1
=====

Classification: UNCLASSIFIED

Michael Bromwich

b6 -3
b7C -3

Mon 3/5/18, 7:15 Am

left msg on his cell ph

*He reps Andy McCabe.
Just wants to know process. CW explained to Andy on his last day. It is...
They w/ an NDA - until 1G's final rpt released 4/FBI. I w/ n/ release details.
Rpt deemed final when goes to us. I further agree th
They w/ blinders on. even once rel'd to FBI,
I w/ n/ rel. draft th
n/ ink it to final.*

203D-110

-42

b6 -1
b7C -1

FBI 18-cv-01766-1609