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

Total Withheld Page(s) = 4

Bates Page Reference	Reason for Withholding (i.e., exemptions with coded rationale, duplicate, sealed by order of court, etc.)
18-cv-01766-2063 – 18-cv-01766-2066	(b)(2)-1, (b)(5)-3, (b)(6)-1, (b)(7)(C)-1

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X   Deleted Page(s)      X
X   No Duplication Fee   X
X   For this Page        X
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DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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]

b6 -1
b7C -1

263D-HQ-[redacted]-31

b6 -1
b7C -1

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U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

May 27, 2008

MEMORANDUM FOR THE DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

FROM: Mark Filip
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.

KEY FBI executives

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.

-10 1 Below

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

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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

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

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FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
POSITION MANAGEMENT:	POSITION MANAGEMENT:	POSITION MANAGEMENT:
• Establishment/abolishment of Senior Executive Service (SES) positions	• Same	• Authority to request allocation of Senior Executive Service spaces from the Office of Management and Budget
• Abolishment of encumbered SES positions [i.e., reduction-in-force (RIF)]	• Same	• Authority to request allocation of Senior Level spaces from the Office of Personnel Management (OPM)
	• Authority to refill established SL position	• 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
STAFFING:	STAFFING:	STAFFING:
• Establishment of qualifications standards	• Same	• Appointment and assignment of key FBI-DEA SES executives.
• Establishment of Senior Executive Service Career Boards	• Same	
• Approval of SES and SL appointments (except those retained by the DAG)	• Same	
• Approval of SES and SL reassignments, reinstatements, transfers, and intradepartmental details (except those retained by the DAG)	• Same	
• Limited Term and Limited Emergency SES Appointments (except those retained by the DAG)	• Same	

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
COMPENSATION:	COMPENSATION:	COMPENSATION:
• Initial pay setting up to ES-6 (except those retained by the DAG)	• Same	• Initial pay setting and pay adjustments for key FBI-DEA SES executives
• Pay adjustments up to ES-6 (except those retained by the DAG)	• Same	
	• Initial pay setting and pay adjustments for SL positions up to SL-4 (except those retained by the DAG)	
	• Recruitment and Relocation Bonuses	• Retention allowances
• Alternative Work Schedules - Flexible or Compressed	• Same	

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
PERFORMANCE MANAGEMENT	PERFORMANCE MANAGEMENT	PERFORMANCE MANAGEMENT
• SES and SL Superior Accomplishment Awards (except those retained by the DAG)	• Same	• SES and SL Superior Accomplishment Awards for key FBI-DEA SES executives
• SES Recertification determinations	• Same	
• Performance appraisals	• Same	• SES performance bonuses for key FBI-DEA SES executives
• SES performance bonuses (except those retained by the DAG)	• Same	
• Appointment of Performance Review Boards	• Same	
• Performance-based reassignments (except those retained by the DAG)	• Same	• 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 18-cv-01766-1483

01-05-00 10:40 From T-741 P 07/08 F-542

FBI-DEA SENIOR EXECUTIVE SERVICE DELEGATION OF AUTHORITY

CURRENT DELEGATION	APPROVED DELEGATION	AUTHORITY RETAINED BY THE DAG/AG
ADVERSE ACTIONS: • Suspension (except those retained by the DAG) • Removal (except those retained by the DAG)	ADVERSE ACTIONS: • Same • Same	ADVERSE ACTIONS: • Suspension or removal of key FBI-DEA SES executives and SL employees
OTHER ACTIONS:	OTHER ACTIONS:	OTHER ACTIONS: • 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.

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

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).

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DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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] b6 Per DOJ/OIP
Subject: IG Report

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

263D-HQ-[redacted]-36 b6 -1
b7C -1

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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

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

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

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

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

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

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b7C -1

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

FBI 18-cv-01766-1500

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b6 -1
b7C -1

3/7/18

Telephone call w/ Rob Hur:

DAG / Scott Schools - he met w/ them

b5 Per DOJ/OIP

[redacted]

b5 Per DOJ/OIP

[redacted]

266D-HQ- [redacted] 37

b6 -1
b7C -1

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DATE 07-30-2018 BY [redacted] NSICG 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.

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DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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 b6 -3 b7C -3
Subject: Re: RE: Re:

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

b6 -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

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

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-[redacted]-38 b6 -1 b7C -1

MRB

On Mar 8, 2018, at 10:16 AM, Will, Candice M. (DO) (FBI) [redacted]> wrote: b6 -1 b7C -1

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 b7C -1
Date: 3/8/18 10:14 AM (GMT-05:00)
To [redacted], "Bromwich, Michael R." b6 -3 b7C -3
<[redacted]>>
Cc: "Schools, Scott (ODAG) (JMD)"
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"
<[redacted]> b6 -3 b7C -3
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]> b6 -3 b7C -3
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)" b6 -1 b7C -1
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"
[redacted] b6 -3 b7C -3
Subject: Re: RE: Re:

My address is correct, thank you.

Eric

Eric B. Bruce
[redacted] (Washington DC)
[redacted] (New York)

b6 -3
b7C -3

KOBRE & KIM LLP
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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]
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

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. It 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] b6 -3
[redacted]> b7C -3
Date: 3/8/18 8:31 AM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" b6 -1
[redacted]>> b7C -1
Cc:
[redacted] b6 -3
[redacted] "Schools, Scott (ODAG) (JMD)" b7C -3
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov><mailto: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

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.

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HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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 11am or await your call at [redacted] Your call. b6 -1 b7C -1

Candice

-

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

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

MRB

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

b6 -1
b7C -1

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><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich" [redacted]>
Subject: Re: RE: Re:

b6 -1
b7C -1
b6 -3
b7C -3
b6 -3
b7C -3

Michael:

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

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Candice

-

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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<mailto: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
b6 -3
b7C -3

My address is correct, thank you.

Eric

Eric B. Bruce
[redacted] (Washington DC) b6 -3
(New York) b7C -3

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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.

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.
Cc: b6 -3
[redacted] Schools, Scott (ODAG) (JMD); Michael R. Bromwich 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. It 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] 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] b6 -3 b7C -3 "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"
[redacted] b6 -3 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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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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:

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.

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On Mar 8, 2018, at 10:41 AM, Will, Candice M. (DO) (FBI) [redacted] wrote: b6 -1 b7C -1

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

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On Mar 8, 2018, at 10:16 AM, Will, Candice M. (DO) (FBI) [redacted] wrote: b6 -1 b7C -1

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 b7C -1

FBI 18-cv-01766-1513

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><mailto: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.

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Candice

-

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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<mailto: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

My address is correct, thank you.

Eric

Eric B. Bruce
[redacted] (Washington DC)
(New York)

b6 -3
b7C -3

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FBI 18-cv-01766-1514

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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 b7C -1
Sent: Thursday, March 08, 2018 9:13 AM
To: Bromwich, Michael R. b6 -3 b7C -3
Cc: [redacted] Schools, Scott (ODAG) (JMD); Michael R. Bromwich
Subject: Re:

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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

-

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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
Cc:
[redacted] b6 -3
b7C -3
"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"
[redacted] b6 -3
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.

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DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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Candice

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b7C -3
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)" b6 -1
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich" b7C -1
[redacted]>> b6 -3
Subject: Re: RE: Re: b7C -3

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] b6 -3
wrote: b7C -3

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Sent: Thursday, March 08, 2018 9:13 AM
To: Bromwich, Michael R.
Cc: [redacted] Schools, Scott b6 -3
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Candice
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[redacted] b7C -3
Date: 3/8/18 8:31 AM (GMT-05:00) b6 -1
To: "Will, Candice M. (DO) (FBI)" [redacted] b7C -1
Cc: [redacted] "Schools, b6 -3
Scott (ODAG) (JMD)" b7C -3
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov><mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich"
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[redacted] b7C -3
Subject: Re:

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 10:17 AM
To: [redacted] Bromwich, Michael R.
Cc: Schools, Scott (ODAG) (JMD); Michael R. Bromwich
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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

b6 -3
b7C -3

My address is correct, thank you.

Eric

FBI 18-cv-01766-1522

Eric B. Bruce b6 -3
[redacted](Washington DC) b7C -3
[redacted](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
[redacted]> wrote: b7C -3

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Sent: Thursday, March 08, 2018 9:13 AM
To: Bromwich, Michael R.
Cc: [redacted]>; Schools, Scott (ODAG) (JMD); Michael R. Bromwich b6 -3 b7C -3
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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. It it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

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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<mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich" [redacted]>
Subject: Re:

b6 -3
b7C -3
b6 -1
b7C -1
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.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 10:14 AM
To: [redacted] Bromwich, Michael R. b6 -3 b7C -3
Cc: Schools, Scott (ODAG) (JMD); Michael R. Bromwich
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] b6 -3 b7C -3
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]> b6 -1 b7C -1
Subject: Re: RE: Re: b6 -3 b7C -3

My address is correct, thank you.

Eric

Eric B. Bruce
[redacted] (Washington DC)
(New York) b6 -3 b7C -3

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.
<[redacted]> wrote: b6 -3 b7C -3

Candice:

As to #2, yes, that's our preference for [redacted]ieving the package so it doesn't fall into th[redacted]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) [mailt[redacted] b6 -1
Sent: Thursday, March 08, 2018 9:13 AM b7C -1
To: Bromwich, Michael R.
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. It 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 -------- b6 -3 b7C -3
From: "Bromwich, Michael R." <[redacted]>
Date: 3/8/18 8:31 AM (GMT-05:00) b6 -1
To: "Will, Candice M. (DO) (FBI)" <[redacted]> b7C -1
Cc: [redacted], "Schools, Scott (ODAG) (JMD)" b6 -3
<Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>>, "Michael R. Bromwich" b7C -3

<[redacted]>>

b6 -3
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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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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 b6 -3 b7C -3
Subject: Re:

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]" b6 -3 b7C -3
Date: 3/8/18 8:31 AM (GMT-05:00) b6 -1
To: "Will, Candice M. (DO) (FBI)" [redacted] b7C -1
Cc: [redacted] "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [redacted] b6 -3 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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG

b6 -1
b7C -1

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

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. It 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 -------- b6 -3
From: "Bromwich, Michael R." [redacted] b7C -3
Date: 3/8/18 8:31 AM (GMT-05:00) b6 -1
To: "Will, Candice M. (DO) (FBI)" [redacted] b7C -1
Cc [redacted] 'Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>, "Michael R. Bromwich" [redacted] b6 -3 b7C -3
Subject: Re: [redacted]

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.

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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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

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. It it already has been delivered, I will send one of my Agents to retrieve it. Is that your preference?

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b6 -3
b7C -3

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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
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.

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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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

b6 -3
b7C -3

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

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.

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

Thank you.

MRB

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DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

IIS-3 (2005-05-25)

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.

MRBromwich
(Signature of Attorney)

March 8, 2018
(Date)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

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

b6 -3
b7C -3

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
[redacted]

b6 -1
b7C -1

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG b6 -1
b7C -1

[redacted] (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 08, 2018 5:07 PM
To: [redacted] (DO) (FBI); [redacted] (DO) (FBI) b6 -1 b7C -1
Subject: Fwd: FBI SES policies
Attachments: FBI policy.doc

-------- 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] b6 -1 b7C -1
Subject: FW: FBI SES policies

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]

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-[redacted]-39 b6 -1 b7C -1

b5 Per DOJ/OLC

[redacted]

b5 Per DOJ/OLC

2. [redacted]

b5 Per DOJ/OLC

3. [redacted]

b5 Per DOJ/OIP

[redacted]

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.

FBI 18-cv-01766-1543

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.

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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

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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,

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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.

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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

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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.

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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.

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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.

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(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:

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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.

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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.

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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.

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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

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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

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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

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(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

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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

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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

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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

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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.

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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) employees[1] 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.

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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

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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.

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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 executives[2]; 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.

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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

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 PWPs 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 PWPs.

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.

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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.

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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:

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(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.

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(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.

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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

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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

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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.

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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.

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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.

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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

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(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

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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.).

FBI 18-cv-01766-1592

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.

FBI 18-cv-01766-1593

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

FBI 18-cv-01766-1594

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.

FBI 18-cv-01766-1595

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.

FBI 18-cv-01766-1596

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

FBI 18-cv-01766-1597

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

FBI 18-cv-01766-1598

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.

FBI 18-cv-01766-1599

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.

FBI 18-cv-01766-1600

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

FBI 18-cv-01766-1601

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

FBI 18-cv-01766-1602

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.

FBI 18-cv-01766-1603

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.

FBI 18-cv-01766-1604

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.

FBI 18-cv-01766-1605

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-30-2018 BY [redacted] NSICG

b6 -1
b7C -1

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 [redacted] and former [redacted] We did not cite or rely on [redacted] or [redacted] at all. We have only the briefest mention of [redacted] and what we mention was confirmed by other unredacted witnesses (e.g., Comey and [redacted], plus what we mention about [redacted] 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, [redacted]) 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.

b6 -2
b7C -2

Candice

263D-HQ- [redacted] -41

b6 -1
b7C -1

Unknown

From: COMEY, JAMES B. (DO) (FBI)
Sent: Monday, October 24, 2016 9:10 AM
To: WILL, CANDICE M. (OPR) (FBI); MCCABE, ANDREW G. (DO) (FBI); BOWDICH, DAVID L. (DO) (FBI); PARLAVE, VALERIE (DO) (FBI); RYBICKI, JAMES E. (DO) (FBI)
Subject: RE: OPR's Bi-Weekly Report for the Director: October 8-21, 2016 --- UNCLASSIFIED//~~FOUO~~

SentinelCaseId: TRANSITORY RECORD

Classification: UNCLASSIFIED//~~FOUO~~
==========

Thanks. Busy time. Unrelated: Chuck Rosenberg tells me he has begun a practice of not closing matters when an employee resigns or retires to avoid an employee who has engaged in misconduct returning to government service without record of a completed investigation. At some point, I would like your thoughts on this.

From: WILL, CANDICE M. (OPR) (FBI)
Sent: Friday, October 21, 2016 4:25 PM
To: COMEY, JAMES B. (DO) (FBI) <JBCOMEY@fbi.sgov.gov>; MCCABE, ANDREW G. (DO) (FBI) <AGMCCABE@fbi.sgov.gov>; BOWDICH, DAVID L. (DO) (FBI) [redacted] PARLAVE, VALERIE (DO) (FBI) [redacted]; RYBICKI, JAMES E. (DO) (FBI) <JERYBICKI@fbi.sgov.gov>
Subject: OPR's Bi-Weekly Report for the Director: October 8-21, 2016 --- UNCLASSIFIED//~~FOUO~~

b6 -1
b7C -1

Classification: UNCLASSIFIED//~~FOUO~~
==========
TRANSITORY RECORD
~~SENSITIVE PERSONNEL INFORMATION - DO NOT FORWARD~~

OPR'S BI-WEEKLY REPORT FOR THE DIRECTOR
October 8-21, 2016

A. New Investigations Involving SES Members or Other Supervisory Personnel (Not Yet Forwarded to OPR):

[redacted]

b2 -1
b5 -3
b6 -1
b7C -1

Unknown

From: COMEY, JAMES B. (DO) (FBI)
Sent: Thursday, October 27, 2016 8:18 AM
To: MCCABE, ANDREW G. (DO) (FBI)
Subject: RE: PAR Scores --- UNCLASSIFIED

SentinelCaseId: TRANSITORY RECORD

Classification: UNCLASSIFIED
==========
TRANSITORY RECORD

Well done.

From: MCCABE, ANDREW G. (DO) (FBI)
Sent: Wednesday, October 26, 2016 8:37 PM
To: FBI_SAC's <FBI_SAC's@fbinet.fbi>; COMEY, JAMES B. (DO) (FBI) <JBCOMEY@fbi.sgov.gov>
Cc: STEINBACH, MICHAEL B. (DO) (FBI) <MBSTEINBACH@fbi.sgov.gov>; COLEMAN, RANDALL C. (DO) (FBI) <RCCOLEMAN@FBI.SGOV.GOV>; TURGAL, JAMES L. (DO) (FBI) <JLTURGAL@fbi.sgov.gov>; HESS, AMY S. (DO) (FBI) [redacted] PIEHOTA, CHRISTOPHER M. (TSC) (FBI) [redacted]; SKULE, JOSHUA (DO) (FBI) [redacted]; PARLAVE, VALERIE (DO) (FBI) [redacted]
Subject: PAR Scores --- UNCLASSIFIED

b6 -1
b7C -1

Classification: UNCLASSIFIED
==========
TRANSITORY RECORD

Folks:

As promised in today's SVTC, I want to give some context to the PAR scores you received last week. [redacted]

b2 -1
b6 -1
b7C -1

[redacted]

b2 -1
b6 -1
b7C -1

b2 -1
b6 -1
b7C -1

b2 -1
b6 -1
b7C -1

Sorry for the long email, but I want you all to understand the way that I think about these issues, as well as the facts and circumstances that have impacted this year's scores and bonuses. I am happy to discuss in greater detail with anyone who wishes to chat.

Most importantly, thanks for the incredible job this year.

Best,

AM

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation

b6 -1
b7C -1

==========
Classification: UNCLASSIFIED

==========
Classification: UNCLASSIFIED

Unknown

From:	MCCABE, ANDREW G. (DO) (FBI)
Sent:	Wednesday, October 26, 2016 8:37 PM
To:	FBI_SAC's; COMEY, JAMES B. (DO) (FBI)
Cc:	STEINBACH, MICHAEL B. (DO) (FBI); COLEMAN, RANDALL C. (DO) (FBI); TURGAL, JAMES L. (DO) (FBI); HESS, AMY S. (DO) (FBI); PIEHOTA, CHRISTOPHER M. (TSC) (FBI); SKULE, JOSHUA (DO) (FBI); PARLAVE, VALERIE (DO) (FBI)
Subject:	PAR Scores --- UNCLASSIFIED
SentinelCaseId:	TRANSITORY RECORD

Classification: UNCLASSIFIED

==========

TRANSITORY RECORD

Folks:

As promised in today's SVTC, I want to give some context to the PAR scores you received last week. [redacted]

b2 -1
b6 -1
b7C -1

[redacted]

b2 -1
b6 -1
b7C -1

b2 -1
b6 -1
b7C -1

b2 -1
b6 -1
b7C -1

Sorry for the long email, but I want you all to understand the way that I think about these issues, as well as the facts and circumstances that have impacted this year's scores and bonuses. I am happy to discuss in greater detail with anyone who wishes to chat.

Most importantly, thanks for the incredible job this year.

Best,

AM

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation b6 -1
b7C -1

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Classification: UNCLASSIFIED

Unknown

From: COMEY, JAMES B. (DO) (FBI)
Sent: Wednesday, October 26, 2016 4:30 PM
To: WILL, CANDICE M. (OPR) (FBI); MCCABE, ANDREW G. (DO) (FBI); BOWDICH, DAVID L. (DO) (FBI); PARLAVE, VALERIE (DO) (FBI); RYBICKI, JAMES E. (DO) (FBI)
Subject: RE: OPR Adjudications of Retired/Resigned Employees --- UNCLASSIFIED//~~FOUO~~

SentinelCaseId: TRANSITORY RECORD

Classification: UNCLASSIFIED//~~FOUO~~
==========

Thanks, Val [redacted] Thanks.

b2 -1
b5 -3

From: WILL, CANDICE M. (OPR) (FBI)
Sent: Tuesday, October 25, 2016 4:08 PM
To: COMEY, JAMES B. (DO) (FBI) <JBCOMEY@fbi.sgov.gov>; MCCABE, ANDREW G. (DO) (FBI) <AGMCCABE@fbi.sgov.gov>; BOWDICH, DAVID L. (DO) (FBI) [redacted]; PARLAVE, VALERIE (DO) (FBI) [redacted]; RYBICKI, JAMES E. (DO) (FBI) <JERYBICKI@fbi.sgov.gov>
Subject: OPR Adjudications of Retired/Resigned Employees --- UNCLASSIFIED//~~FOUO~~

b6 -1
b7C -1

Classification: UNCLASSIFIED//~~FOUO~~
==========
TRANSITORY RECORD

Director Comey:

You requested my thoughts on whether, when an employee resigns or retires during the pendency of an OPR proceeding, we should nevertheless complete the adjudication. [redacted]

b2 -1
b5 -3

[redacted]

b2 -1
b5 -3

b2 -1
b5 -3

b2 -1
b5 -3

b2 -1
b5 -3

b2 -1
b5 -3

Bottom line is we will do whatever you think is best

b2 -1
b5 -3

Candice

==========
Classification: UNCLASSIFIED/~~/FOUO~~

==========
Classification: UNCLASSIFIED/~~/FOUO~~

Unknown

From:	COMEY, JAMES B. (DO) (FBI)
Sent:	Wednesday, October 26, 2016 12:56 PM
To:	BITKO, GORDON D. (DO) (FBI); HESS, AMY S. (DO) (FBI); BOWDICH, DAVID L. (DO) (FBI); MCCABE, ANDREW G. (DO) (FBI); RYBICKI, JAMES E. (DO) (FBI); [redacted] (IP) (FBI); TEMIN, HAYDEN S. (RPO) (FBI); SKULE, JOSHUA (DO) (FBI); PARLAVE, VALERIE (DO) (FBI); BEAN, W. L. (ITID) (FBI); STEINBACH, MICHAEL B. (DO) (FBI); SWEENEY, WILLIAM F. (NY) (FBI); ABBATE, PAUL (WF) (FBI)
Cc:	TURGAL, JAMES L. (DO) (FBI); PIEHOTA, CHRISTOPHER M. (TSC) (FBI)
Subject:	Thoughts on Stewardship self-eval --- UNCLASSIFIED
SentinelCaseId:	TRANSITORY RECORD

b6 -1
b7C -1

Classification: UNCLASSIFIED
==========

TRANSITORY RECORD

Team:

I was reflecting on our conversation yesterday about the Stewardship strategic objective. I couldn't quite put into coherent words my sense that the consensus grade was too low, but I think I can now.

I worry that the current grade is over-weighting the non-personnel side of our budget. That is, I share the concern that we are not being sufficiently strategic on our tech spend, etc., but I think we are very thoughtful and strategic about how we spend the more than 60% of our budget that is personnel. For example, the TRP process drives what our people work on, and our risk tools and models drive the allocation of people across our offices. This has always struck me as a model of thoughtful and strategic stewardship of personnel resources, one that places like DEA are trying to emulate.

If I am right that the concerns about strategic allocations are primarily focused on the minority of our budget, are we really a 2/10 in the current state? My reaction is that we are better than that. I would guesstimate that we are an 8 when it comes to strategic personnel deployment and a 2 when it comes to strategic non-personnel spend, which nets to something like 5.5 given their weights. Our goal is to be great across the entire budget, which would get us to a 10, but that's why I was a little stuck on the current rating.

No need to reply here, but maybe we can chew on it a bit next time we are together.

JBC

==========
Classification: UNCLASSIFIED

Unknown

From:	MCCABE, ANDREW G. (DO) (FBI)
Sent:	Monday, October 24, 2016 5:29 PM
To:	FBI_ADs and EADs
Subject:	Office of National Policy (ONP) Update --- UNCLASSIFIED
Attachments:	IPC Reporting Template.docx
SentinelCaseId:	TRANSITORY RECORD

Classification: UNCLASSIFIED
==========

TRANSITORY RECORD

EADs and ADs,

I want to make you aware of how we recently updated the mission of the Office of National Policy (ONP), and what this means for you. We are making changes to this office in order to better identify and address important policy issues that are brewing at the White House.

In the past, the ONP focused its energy on a handful of the FBI's priority issues, e.g. Going Dark. In the future, the ONP will more comprehensively track all meetings that the FBI attends at the White House. In particular, the ONP will prioritize tracking all Interagency Policy Committee (IPC) meetings and other IPC-level meetings.

In order to meet this objective, the ONP will reassign its staff by branch and division in order to work closely with the folks who already handle White House policy in each branch and division. ONP's staff will be reaching out to your folks soon to introduce themselves.

To be clear, although the ONP will play an important tracking role for all meetings and may provide valuable advice on policy matters, they will not take over a division's responsibility to cover their own respective policy issues. Bottom line: you will still own your policy issues, and the ONP will help you address, coordinate and communicate them back to senior leadership.

To accomplish this efficiently and consistently, I have asked the ONP to collect from each branch or division a one-page written summary each time you cover an IPC or IPC level meeting. The ONP has created a helpful template to facilitate this process and to ensure a level of consistency. The template is designed to be informative, but brief and easy to complete. Please have the summaries submitted by the end of the next business day following the IPC. You can submit them to [redacted] b7E -4

<<IPC Reporting Template.docx>>

Please let me know if there are any questions or concerns.

Thanks,

Andy

==========
Classification: UNCLASSIFIED

<James.Rybicki@ic.fbi.gov> [redacted]
(DO) (FBI)" [redacted] (IR) (FBI)' [redacted] "Steinbach, Michael B. (DO) (FBI)" [redacted] "Turgal, James L. (DO) (FBI)" [redacted] (IR) (FBI)" [redacted] b6 -1 b7C -1
Subject: DIRECTOR'S WEEKEND REPORT 10/29/2016

ALCON,

THIS DOCUMENT IS INTERNAL AND MAY NOT BE RELEASED OUTSIDE THE FBI WITHOUT PRIOR AUTHORIZATION

Director's Weekend Report:

Criminal, Cyber, Response and Services Branch

CYBER DIVISION

(U) Cyber Operations Section III (CyOS III):

(U) On 10/29/2016, WikiLeaks released 596 emails in Part 22 of its Podesta release, bringing the total emails released so far to 36,190.

National Security Branch

COUNTERTERRORISM DIVISION

Adrian Apodaca:

On 28 October 2016, at approximately 4:40 pm, Apodaca was arrested without incident in Valdosta, Georgia by FBI AT SWAT.

Following the arrest, Apodaca was transported to FBI AT, Valdosta RA to be processed. Apodaca requested legal representation and no interview was conducted. Apodaca's initial appearance is scheduled for Monday, 31 October 2016, in Valdosta, GA, in the Middle District of Georgia.

During the trip from Davie, Florida to Valdosta, Georgia, Apodaca did not confess to his alleged involvement in the Albuquerque, New Mexico murders. He spoke only generically about a crossbow as a way to kill someone and did not make a specific admission. After review by FBI MM, all relevant audio and video recordings from the operation will be provided to Bernalillo Police Department (New Mexico), pursuant to the state murder investigation.

Information and Technology Branch

[redacted] b7E -4

Emergency Action Specialist [redacted] b6 -1
Unit Chief [redacted] b7C -1
Strategic Information & Operations Center (SIOC)
FBIHQ, Room 5712

b6 -1
b7C -1

THIS DOCUMENT IS INTERNAL AND MAY NOT BE RELEASED OUTSIDE THE FBI WITHOUT PRIOR AUTHORIZATION

From: James B. Comey
Sent: Monday, October 24, 2016 9:36 PM
To: Rybicki, James E. (DO) (FBI); Mccabe, Andrew G. (DO) (FBI)
Subject: RE: NYT: Justice Dept. Replaces Investigators on Eric Garner Case

Thanks.

-

-------- Original message --------
From: "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>
Date: 10/24/16 9:10 PM (GMT-05:00)
To: "James B. Comey" <jcb.dir@ic.fbi.gov>, "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject: Fwd: NYT: Justice Dept. Replaces Investigators on Eric Garner Case

Justice Dept. Replaces Investigators on Eric Garner Case
October 24, 2016

By MATT APUZZO, ADAM GOLDMAN and WILLIAM K. RASHBAUM

The Justice Department has replaced the New York team of agents and lawyers investigating the death of Eric Garner<http://nyti.ms/1GEerSm>, officials said, a highly unusual shake-up that could jump-start the long-stalled case and put the government back on track to seek criminal charges.

Mr. Garner, 43, died in 2014 on a Staten Island street corner, where two police officers confronted him and accused him of selling untaxed cigarettes. One of the officers, Daniel Pantaleo, was seen on a video using a chokehold, prohibited by the New York Police Department<http://topics.nytimes.com/top/reference/timestopics/organizations/n/new_york_city_police_department/index.html?inline=nyt-org>, to subdue him. Mr. Garner's last words, "I can't breathe," became a rallying cry for protesters around the country.

Federal authorities have been investigating whether officers violated Mr. Garner's civil rights in his fatal encounter with the police. But the case had been slowed<http://www.nytimes.com/2016/07/12/nyregion/with-prosecutors-at-odds-us-inquiry-into-eric-garners-death-drags-on.html> by a dispute because federal prosecutors and Federal Bureau of Investigation<http://topics.nytimes.com/top/reference/timestopics/organizations/f/federal_bureau_of_investigation/index.html?inline=nyt-org> officials in New York opposed bringing charges, while prosecutors with the Civil Rights Division at the Justice Department in Washington argued there was clear evidence to do so.

Attorney General Loretta E. Lynch, who as the United States attorney for the Eastern District of New York oversaw the beginning of the federal inquiry before her appointment to Washington, has been considering for months how to proceed.

In recent weeks, the F.B.I. agents who have been investigating the case were replaced with agents from outside New York, according to five federal officials in New York and Washington. Federal prosecutors in Brooklyn are no longer assigned to the case. It is not clear whether civil rights prosecutors from Washington will work alone in presenting evidence to a grand jury in Brooklyn and in trying the case if charges are eventually brought.

The officials who described the reorganization did so on the condition of anonymity because they were not authorized to discuss it publicly.

Mr. Garner's death, followed by the fatal police shooting of Michael Brown in Ferguson, Mo., and several other high-profile deadly police encounters across the country, prompted nationwide protests over how and when officers use force, particularly against black men. Though the Justice Department has required police departments to stop unconstitutional practices and retrain officers, it has rarely brought charges against individual officers.

To do so in the Garner case, prosecutors must persuade a grand jury that a crime occurred. Normally, that is all but guaranteed and an indictment follows. But Officer Pantaleo's testimony helped persuade a state grand jury on Staten Island not to bring charges in December 2014. Any decision on charges in the federal case is quite likely months away, officials said.

The Justice Department and the F.B.I. did not comment.

Stuart London, a lawyer for Officer Pantaleo, said that he had maintained he never violated anyone's civil rights. "This was always a simple street encounter where Officer Pantaleo utilized his N.Y.P.D. training to subdue an individual," Mr. London said.

He added: " If it is true that the Justice Department is rejecting the recommendations of seasoned F.B.I. agents and assistant United States attorneys<http://topics.nytimes.com/top/reference/timestopics/subjects/u/united_states_attorneys/index.html?inline=nyt-classifier>, this is a gross miscarriage of justice. In our system of justice, politics should never take the place of the rule of law."

Officer Pantaleo was stripped of his badge and gun two days after Mr. Garner's death, and he has remained on desk duty. But as is typical in such cases, departmental hearings that could lead to his dismissal have been delayed during the criminal investigations.

For Mayor Bill de Blasio, the slow pace of the investigation has allowed the Garner case to linger, a reminder of a flash point during his tenure and a sign of his struggle to balance his pledge to champion criminal justice reform with the practical realities of overseeing the country's largest local police force.

The changes by federal officials, while reigniting the investigation, also signal a difficult road ahead. Prosecuting police officers is difficult even when investigators agree about the strength of the case. In the Garner case, the Justice Department is moving forward knowing that a team of agents and prosecutors believes the case should not be brought. If it goes to trial, defense lawyers would probably try to exploit that division and use it to sow doubt. They could even try to call F.B.I. agents who were taken off the case as defense witnesses, officials said.

Another complicating factor, according to three federal officials, is that the disagreement between Washington and New York is reflected in the F.B.I. reports, which often become evidence at trial.

These disputes have significantly slowed the investigation. Since Mr. Garner's death, the Justice Department has opened and completed investigations into fatal police encounters in Ferguson; Falcon Heights, Minn.; North Charleston, S.C.; and Cleveland. Each was closed except the North Charleston case, which led tofederal charges against the officer<http://www.nytimes.com/2016/05/12/us/south-carolina-officer-faces-federal-charges-in-fatal-shooting.html>for shooting an unarmed man in the back as he fled.

The Garner case, though, has dragged on. Two years ago, when Eric H. Holder Jr. was attorney general, he told colleagues that the evidence made clear that the Justice Department should bring charges, according to a former department official who was in attendance. Prosecutors might lose, he said, but the government had to bring the case. Career civil rights prosecutors agreed.

Prosecutors in New York, though, strongly disagreed with that analysis. The dispute hinged on whether Officer Pantaleo intended to violate Mr. Garner's civil rights. Officer Pantaleo has said he did not mean to put Mr. Garner in a chokehold<http://www.nytimes.com/2014/12/04/nyregion/officer-told-grand-jury-he-meant-no-harm-to-eric-garner.html?_r=0>. The officer said he tried to use a maneuver that involved hooking an arm underneath one of Mr. Garner's arms while wrapping the other around his torso. During the struggle, Officer Pantaleo said he feared he would be pushed through a storefront window behind him.

Prosecutors and F.B.I. agents in New York argued that video captured by a bystander supported Officer Pantaleo's account. Civil rights prosecutors in Washington disagreed, saying it showed evidence of willful wrongdoing.

Attorney General Lynch came into office last year in the middle of that dispute. She has a reputation for being deferential to prosecutors in the field rather than dictating from Washington. But she has also heavily relied on the advice of her civil rights prosecutors, who are more removed from the local police departments that they investigate.

http://mobile.nytimes.com/2016/10/25/nyregion/justice-dept-replaces-investigators-on-eric-garner-case.html

FBI 18-cv-01766-2132

From: Mccabe, Andrew G. (DO) (FBI)
Sent: Sunday, October 23, 2016 5:31 PM
To: James B. Comey
Subject: RE: DIRECTOR'S WEEKEND REPORT 10/23/2016

Agree. Thanks.

--

-------- Original message --------
From: "James B. Comey" <jcb.dir@ic.fbi.gov>
Date: 10/23/16 5:15 PM (GMT-05:00)
To: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [redacted] b6 -1 b7C -1
Subject: RE: DIRECTOR'S WEEKEND REPORT 10/23/2016

Marks cell is [redacted] b6 -1 b7C -1

Let me know if I can help. Unrelated, I thought the times story on women in leadership was fair.

-

-------- Original message --------
From: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Date: 10/23/16 5:00 PM (GMT-05:00)
To: "James B. Comey" <jcb.dir@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [redacted] b6 -1 b7C -1
Subject: Fwd: DIRECTOR'S WEEKEND REPORT 10/23/2016

Boss

Not too much in the update. The only additional notable news is that Mike K and I spent a good part of the day trying to shape the WSJ story on my alleged conflict. Looks like they may try to release it on line tonight. The reporter also called Jill for a comment, so we are working that as well.

I am trying to reach out to Mark G but don't seem to have his cell. If you have it please shoot it my way.

Thanks and see you tomorrow.

--

-------- Original message --------
From: SIOC [redacted] b7E -4
Date: 10/23/16 4:40 PM (GMT-05:00)
To: "Bowdich, David L. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Castor, Andrew J. (DO) (FBI)" [redacted] "Coleman, Randall C. (CD) (FBI)" <Randall.Coleman@ic.fbi.gov> [redacted] (DO) (FBI)" [redacted] "Davis, Paul R. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Drolshagen, Rainer S. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Hacker, J. C. (CID) (FBI)" [redacted] "Hess, Amy S. (DO) (FBI)" [redacted] (CYD) (FBI)" [redacted] "Johnson, David J. (DO) (FBI)" [redacted] "Maguire, Jacqueline (BH) (FBI)" [redacted] "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>, "Mcdermott, Renae M. (DO) (FBI)" [redacted] "Parlave, Valerie (DO) (FBI)" [redacted] "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, [redacted] (DO) (FBI) [redacted] (IR) (FBI)" [redacted] "Steinbach, Michael B. (DO) (FBI)" [redacted] "Turgal, James L. (DO) (FBI)" [redacted] (IR) (FBI)" [redacted] b6 -1 b7C -1
Subject: DIRECTOR'S WEEKEND REPORT 10/23/2016

ALCON,

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Director's Weekend Report:

Criminal, Cyber, Response and Services Branch

CYBER DIVISION

- Cyber Operations Section III (CyOS III):
  - (U) On October 23, 2016, Wikileaks released 708 emails hacked from the personal Gmail account of Clinton Campaign Chair John Podesta. Wikileaks promises to release the remainder of over 50,000 emails taken from Chairman Podesta's account.

Emergency Action Specialist [redacted]
Supervisory Special Agent [redacted] b6 -1 b7C -1
Strategic Information & Operations Center (SIOC)
FBI Headquarters, Room 5712
[redacted]

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From: Mccabe, Andrew G. (DO) (FBI)
Sent: Saturday, October 22, 2016 5:29 PM
To: James B. Comey
Subject: RE: DIRECTOR'S WEEKEND REPORT 10/22/2016

Ideal.

--

-------- Original message --------
From: "James B. Comey" <jcb.dir@ic.fbi.gov>
Date: 10/22/16 5:25 PM (GMT-05:00)
To: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [redacted]
Subject: RE: DIRECTOR'S WEEKEND REPORT 10/22/2016

b6 -1
b7C -1

Copy. Nice quiet day. [redacted]

-

-------- Original message --------
From: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Date: 10/22/16 5:20 PM (GMT-05:00)
To: "James B. Comey" <jcb.dir@ic.fbi.gov>, "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, "Bowdich, David L. (DO) (FBI)" [redacted]
Subject: Fwd: DIRECTOR'S WEEKEND REPORT 10/22/2016

b6 -1
b7C -1

Boss:

Only one thing to add to the MM threat issue below. [redacted] He will be contacted by JTTF and interviewed in person today.

b6 -3
b7C -3
b7E -1

Hope your day went well.

--

-------- Original message --------
From: SIOC [redacted]
Date: 10/22/16 4:56 PM (GMT-05:00)

b7E -4

To: "Bowdich, David L. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Castor, Andrew J. (DO) (FBI)" [redacted] "Coleman, Randall C. (CD) (FBI)" <Randall.Coleman@ic.fbi.gov>, [redacted] (DO) (FBI)" [redacted] "Davis, Paul R. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Drolshagen, Rainer S. (DO) (FBI)" [redacted] (DO) (FBI)" [redacted] "Hacker, J. C. (CID) (FBI)" [redacted] "Hess, Amy S. (DO) (FBI)" [redacted] (CYD) (FBI)" [redacted] "Johnson, David J. (DO) (FBI)" [redacted] "Maguire, Jacqueline (BH) (FBI)" [redacted] "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>, "Mcdermott, Renae M. (DO) (FBI)" [redacted] "Parlave, Valerie (DO) (FBI)" [redacted] "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov>, [redacted] (DO) (FBI)" [redacted] (IR) (FBI)" [redacted] "Steinbach, Michael B. (DO) (FBI)" [redacted] "Turgal, James L. (DO) (FBI)" [redacted] (IR) (FBI)" [redacted]

b6 -1
b7C -1

Subject: DIRECTOR'S WEEKEND REPORT 10/22/2016

ALCON,

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Director's Weekend Report:

Criminal, Cyber, Response and Services Branch

CYBER DIVISION

(U//~~FOUO~~) SITUATION:

[redacted]

b7A -1
b7E -1

FBI 18-cv-01766-2141

[redacted]

b7A -1
b7E -1

(U//~~FOUO~~) ACTION:

[redacted]

b7A -1
b7E -1

- (U//~~FOUO~~) FBI Boston will coordinate with DHS.
- MCCU will continue to coordinate with FBI Boston and FBI Anchorage.

BACKGROUND:

[redacted]

b7A -1
b7E -1

National Security Branch

COUNTERTERRORISM DIVISION

- FBI Miami received a PAL report of a threat to shoot people at the Republican Party Headquarters in Vero Beach, FL. FBI Miami was able to confirm the threat originated in [redacted] The subject, [redacted] was already being contacted by locals in reference to another threat. During a TFO telephone interview, [redacted] admitted to calling the Republican Party HQ. [redacted] stated he would not ever harm anyone unless he was defending himself or his family. [redacted] was admonished for making the calls. He was cooperative and open to further contact. The U.S. Secret Service was notified and FBI Tampa will consult with the USAO on the possibility of charges.

b6 -3
b7C -3

- Bomb threat to the Hendersonville Republican Party Headquarters

- On 20 October 2016, [redacted] called and left messages on the voicemail of the Hendersonville Republican Party claiming to have planted bombs in the office. Bomb squads were called and searched the building. No bombs were found. FBI Charlotte, Asheville RA, reached out to the Hendersonville PD and the Henderson County SO to offer assistance but the help was declined. b6 -3 b7C -3

- Local police traced the calls to [redacted] and made contact with him later that day. During an interview with police, [redacted] said he made the threats after reading a Republican pamphlet left at his door. He said he wanted to make sure they didn't come back. He was arrested and charged on state charges of terroristic threats and making a false report concerning a destructive device. FBI Charlotte has found no connection between the threats and the arson of the Republican Headquarters in Hillsborough, NC. b6 -3 b7C -3

- WOODKE - [redacted] Efforts continue to identify the captors and locate WOODKE. b7A -1

[redacted] b3 -1 b6 -3 b7C -3 b7E -1

Information and Technology Branch

The Enterprise Operations Center is actively coordinating to resolve the following priority matter:

LEGAT MH, Manila, Philippines

[redacted] b7E -4

Emergency Action Specialist [redacted]
Unit Chief [redacted]
Strategic Information & Operations Center (SIOC)
FBI Headquarters, Room 5712
[redacted]

b6 -1
b7C -1

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Will, Candice M. (DO) (FBI)

From: [redacted] (OGC) (FBI) b6 -1 b7C -1
Sent: Wednesday, March 14, 2018 5:21 PM
To: Will, Candice M. (DO) (FBI); [redacted] (OGC) (FBI)
Subject: Re:

Candace,
I am not in the office. I reviewed the document and no redactions are warranted. This document can be shown to the subject. Thanks.

[redacted] b6 -1 b7C -1

-------- Original message --------
From: "Will, Candice M. (DO) (FBI)" [redacted]
Date: 3/14/18 5:09 PM (GMT-05:00)
To: [redacted] (OGC) (FBI)" [redacted] (OGC) (FBI)" b6 -1 b7C -1
[redacted]
Subject:

[redacted] b6 -1 b7C -1

Attached is one additional email from the ODAG. I am hopeful this is the last one. Thank you.

Candice

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-22-2018 BY [redacted] NSICG b6 -1 b7C -1

263D-HQ- [redacted] -47 b6 -1 b7C -1

Will, Candice M. (DO) (FBI)

From: Schools, Scott (ODAG) <Scott.Schools@usdoj.gov>
Sent: Wednesday, March 14, 2018 4:39 PM
To: Will, Candice M. (DO) (FBI)
Subject: FW: One more document request
Attachments: [redacted] email to [redacted] Oct 30 2016.pdf; ATT00001.htm

b6 -2
b7C -2

Can you get this to Andy's lawyers? Not sure if OGC needs to see first or I would forward directly. Thanks.

From: Blier, William M.(OIG)
Sent: Wednesday, March 14, 2018 4:37 PM
To: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: Fwd: One more document request

Attached. Please forward to Candice. Her address is not populating on my iPhone.

Thanks. Bill

Sent from my iPhone

On Mar 14, 2018, at 3:51 PM, Schools, Scott (ODAG) <sschools@jmd.usdoj.gov> wrote:

Bill:

Mr. McCabe's attorneys have requested a document referenced in [redacted] interview. It is an October 30, 2016 email from [redacted] to [redacted] forwarding an email from Devlin Barrett and Bates-labeled 34866. I think it would be helpful to me as well. Can you send it our (Candace and me) way? Thanks.

b6 -2
b7C -2

Scott

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-22-2018 BY [redacted] NSICG

b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: [redacted](DO) (FBI)
Sent: Wednesday, March 14, 2018 2:43 PM
To: [redacted](OGC) (FBI); [redacted](OGC) (FBI) b6 -1 b7C -1
Cc: Will, Candice M. (DO) (FBI)
Subject: FW:
Attachments: [Untitled].pdf

[redacted] b6 -1 b7C -1

We have one more batch of documents that need to be redacted as soon as possible. It is only 24 pages. Please email us the redacted copy when it is completed.

Thank you.

[redacted] b6 -1 b7C -1

[redacted]
Unit Chief
Office of Professional Responsibility
Federal Bureau of Investigation
[redacted] b6 -1 b7C -1

-----Original Message-----
From: [redacted] b7E -4
Sent: Wednesday, March 14, 2018 2:31 PM
To: [redacted](DO) (FBI) [redacted] b6 -1 b7C -1
Subject:

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-22-2018 BY [redacted] NSICG b6 -1 b7C -1

Will, Candice M. (DO) (FBI)

From: [redacted] (DO) (FBI)
Sent: Wednesday, March 14, 2018 2:38 PM
To: Will, Candice M. (DO) (FBI); [redacted] (DO) (FBI)
Subject: RE: emails

b6 -1
b7C -1

Candice,

We reviewed Batch 2. Some docs are dupes. We will scan and email the new material to [redacted] for redaction.

b6 -1
b7C -1

[redacted]

b6 -1
b7C -1

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 14, 2018 2:15 PM
To: [redacted] (DO) (FBI) [redacted] (DO) (FBI) [redacted]
Subject: Re: emails

b6 -1
b7C -1

When I say batch 2, I think it was marked "press". It's the batch that isnt the PAR stuff.

-

-------- Original message --------
From: "Will, Candice M. (DO) (FBI)" [redacted]
Date: 3/14/18 2:13 PM (GMT-05:00)
To [redacted] (DO) (FBI)" [redacted] (DO) (FBI) [redacted]
Subject: Fwd: emails

b6 -1
b7C -1

Guys,
Please read the attached. From what I can read on my phone, batch 1 is the same batch I got yesterday (or nearly the same batch) and unresponsive. Batch 2, however, probably needs to go to DPU. Your thoughts?

-

-------- Original message --------
From: "Blier, William M.(OIG)" <William.Blier@usdoj.gov>
Date: 3/14/18 1:54 PM (GMT-05:00)
To: "Will, Candice M. (DO) (FBI)" [redacted]
Subject: FW: emails

b6 -1
b7C -1

Candice,
This is the last of the emails. Based on a quick review, there does not appear to be anything new; all duplicates of what was previously provided.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-22-2018 BY [redacted] NSICG

b6 -1
b7C -1

Thanks. Bill

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-31-2018 BY [redacted] NSICG

b6 -1
b7C -1

From: Mccabe, Andrew G. (DO) (FBI)
Sent: Friday, October 28, 2016 10:35 AM
To: James B. Comey
Subject: RE:

unbelievable

--

-------- Original message --------
From: "James B. Comey" <jcb.dir@ic.fbi.gov>
Date: 10/28/16 10:26 AM (GMT-05:00)
To: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject: RE:

Also that's the first email I've received containing both the words bilingual and friars.

And please don't stress over it. Best for you and the institution that I sort this out without dragging you in by phone. There are plenty of really awful meetings in your future (and past)

-

-------- Original message --------
From: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Date: 10/28/16 10:23 AM (GMT-05:00)
To: "James B. Comey" <jcb.dir@ic.fbi.gov>
Subject: RE:

Thanks for the note. I feel terrible for not bilingual there to help, but I understand how it may have been better to let you plow though this without me being involved.

Look friars to talking later.

as a side note, my samsung has misteriously lost the ablility, or inclination, to put periods and capitalization at the end and beginning of sentences awesome

--

-------- Original message --------
From: "James B. Comey" <jcb.dir@ic.fbi.gov>

Date: 10/28/16 10:20 AM (GMT-05:00)
To: "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>
Subject:

Hey man. I made the decision I was dealing with late yesterday. [redacted] I will call you later today to lay out my thinking and the way forward, which I think will make sense to you. Hope the day is good for you [redacted]

b6 -1
b7C -1

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b6 -1
b7C -1

From: Mccabe, Andrew G. (DO) (FBI)
Sent: Friday, October 21, 2016 6:00 PM
To: James B. Comey
Cc: Rybicki, James E. (DO) (FBI); Bowdich, David L. (DO) (FBI)
Subject: Updates

Boss:

Cyber is closely tracking the DDOS issues we discussed. Boston division is on site with the victim. As of mid-day, they were still attempting to mitigate the second attack. Will provide additional as we get it.

In the more bad news category, Mike K informed me that Devlin Barrett at WSJ is putting together an article claiming I had a conflict of interest on MYR as a result of Jill's campaign connections to Gov. McCaulife. I will work with mike to provide some basic facts to push back. And, as always, will keep you advised.

I am incredibly sorry for adding to the drama on this.

Andrew G. McCabe
Deputy Director
Federal Bureau of Investigation b6 -1
W[redacted] b7C -1
M[redacted]

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 14, 2018 12:14 PM
To: 'Bromwich, Michael R.'; 'Bromwich, Michael R.' [redacted]
Cc: Schools, Scott (ODAG) (JMD)
Subject: RE [redacted] Materials

b6 -3
b7C -3
b6 -2
b7C -2

Gentlemen,

The redaction unit completed all the [redacted] interviews (INSD and OIG) and that is what we are currently delivering. They are still working on the exhibits to [redacted] OIG interview and that we will email to you upon their completion.

b6 -2
b7C -2

Candice

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 14, 2018 11:54 AM
To: Bromwich, Michael R. [redacted] Bromwich, Michael R. [redacted]
Cc: Schools, Scott (ODAG) (JMD) <Scott.Schools@usdoj.gov>
Subject: [redacted] Materials

b6 -3
b7C -3
b6 -2
b7C -2

Good morning, Michael and Eric,

We have the [redacted] materials ready to deliver to you (received from the OIG this morning; our redaction unit just completed its review). We will be delivering them to your respective offices within the next half hour, give or take. 1776, Michael?

b6 -2
b7C -2

I have nothing further from the OIG in the way of Comey/McCabe emails from 10/21-31/2016. I will circle back around with the OIG on that.

Candice
[redacted]

b6 -1
b7C -1

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Wednesday, March 14, 2018 11:54 AM
To: Bromwich, Michael R.; Bromwich, Michael R. [redacted]
Cc: Schools, Scott (ODAG) (JMD)
Subject: [redacted] Materials

b6 -3
b7C -3

b6 -2
b7C -2

Good morning, Michael and Eric,

We have the [redacted] materials ready to deliver to you (received from the OIG this morning; our redaction unit just completed its review). We will be delivering them to your respective offices within the next half hour, give or take. 1776, Michael?

b6 -2
b7C -2

I have nothing further from the OIG in the way of Comey/McCabe emails from 10/21-31/2016. I will circle back around with the OIG on that.

Candice
[redacted]

b6 -1
b7C -1

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Friday, March 16, 2018 8:02 AM
To: [redacted]
Cc: Michael Bromwich; Bromwich, Michael R.
Subject: RE: Emails
Attachments: [redacted] email to Comey Oct 30 2016 (conf call).pdf; [redacted] email to Comey Oct 30 2016 (Dir Weekend Rpt).pdf; Comey [redacted] 2018_03_15_14_25_06.pdf

b6 -3
b7C -3

b6 -2
b7C -2

The OIG completed its review. It located one additional email (that was previously disclosed to you). Attached are a total of three emails that we received from the OIG in response to your request for "any emails between [redacted] and Director Comey on Sunday, October 30."

b6 -2
b7C -2

-----Original Message-----
From [redacted]
Sent: Friday, March 16, 2018 7:32 AM
To: Will, Candice M. (DO) (FBI) [redacted]
Cc: Michael Bromwich [redacted] Bromwich, Michael R. [redacted]
Subject: Re: Emails

b6 -3
b7C -3

b6 -1
b7C -1

b6 -3
b7C -3

Yes please! Thank you.

Eric B. Bruce
[redacted] (Washington DC)
(New York)

b6 -3
b7C -3

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On Mar 16, 2018, at 7:30 AM, Will, Candice M. (DO) (FBI) [redacted] > wrote:

b6 -1
b7C -1

Good morning, Michael and Eric,

Are you still interested in documents responsive to this request? I received copies of two emails from the OIG yesterday afternoon that have been approved for release by our redaction unit. Also, the OIG indicated midday yesterday that it was continuing its search and I will follow-up with them if you have a continuing interest.

Candice

From: Michael Bromwich [mailto: [redacted]
Sent: Thursday, March 15, 2018 9:54 AM
To: Will, Candice M. (DO) (FBI) [redacted]
Cc: Bromwich, Michael R [redacted]; Schools, Scott (ODAG) (JMD) <Scott.Schools@usdoj.gov<mailto:Scott.Schools@usdoj.gov>>

b6 -3
b7C -3

b6 -1
b7C -1

b6 -3
b7C -3

263D-HQ- [redacted] -48

b6 -1
b7C -1

Subject: Re: Emails

Thanks, Candice. Some of the emails are relevant, and one of them causes us to make a narrow supplemental request. Please provide us with any emails between [redacted] and Director Comey on Sunday, October 30. b6 -2 b7C -2

Thanks very much.

MRB

On Thu, Mar 15, 2018 at 7:24 AM, Will, Candice M. (DO) (FBI) [redacted] wrote: b6 -1 b7C -1

Good morning, Michael and Eric,

I have one final delivery pertaining to your requests for additional documents. It is the third and final batch of emails between Comey and McCabe from 10/21-31/2016, which we received from the OIG yesterday afternoon and have been processed by the Bu's redaction unit. The only part of batch 3 that you are not receiving are duplicates of emails contained in OIG's batch 2, which we also did not give you because they have nothing to do with the present matter, only with personnel matters, SAC performance ratings, etc. In fact, the emails you are receiving this morning may be a bit wide of the mark, but we are erring on the side of expansive disclosure given the time constraints. This third and final batch is being delivered to your respective offices first thing this morning. Thank you.

Candice

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To: [redacted] b6 -2 b7C -2

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From: James B. Comey
Sent: Sun 10/30/2016 2:17:31 PM
Importance: Normal
Subject: RE: Conference call
Received: Sun 10/30/2016 2:17:32 PM

Copy.

-

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

From: [redacted] b6 -2 b7C -2

Date: 10/30/16 8:46 AM (GMT-05:00)

To: "James B. Comey" <jcb.dir@ic.fbi.gov>

Subject: Fwd: Conference call

-

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

From: "Herring, Jason V. (CD) (FBI)" <Jason.Herring@ic.fbi.gov>

Date: 10/30/16 8:28 AM (GMT-05:00)

To: [redacted] b6 -2 b7C -2

Subject: Conference call

Just want to update you for your planning purposes...

I have heard nothing from Leahy and Grassley's folks after telling them early yesterday afternoon that we are not briefing outside the 4 corners of the letter.

[redacted] b5 -3

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b6 -1
b7C -1

From: [redacted]
Sent: Sunday, October 30, 2016 4:41 PM
To: James B. Comey
Subject: Fwd: DIRECTOR'S WEEKEND REPORT 10/30/2016

b6 -2
b7C -2

-------- Original message --------
From: SIOC [redacted]
Date: 10/30/16 4:19 PM (GMT-05:00)
To: "Bowdich, David L. (DO) (FBI)" [redacted] DO) (FBI)" [redacted] "Castor, Andrew J. (DO) (FBI)" [redacted] "Coleman, Randall C. (CD) (FBI)" <Randall.Coleman@ic.fbi.gov> [redacted] DO) (FBI)" [redacted] "Davis, Paul R. (DO) (FBI)" [redacted] DO) (FBI)" [redacted] "Drolshagen, Rainer S. (DO) (FBI)" <Rainer.Drolshagen@ic.fbi.gov>, [redacted] (DO) (FBI)" [redacted] "Hacker, J. C. (CID) (FBI)" [redacted] "Hess, Amy S. (DO) (FBI) [redacted] CYD) (FBI)" [redacted] "Johnson, David J. (DO) (FBI)" [redacted] "Maguire, Jacqueline (BH) (FBI)" [redacted] "Mccabe, Andrew G. (DO) (FBI)" <Andrew.McCabe@ic.fbi.gov>, "Mcdermott, Renae M. (DO) (FBI)" [redacted] "Parlave, Valerie (DO) (FBI)" [redacted] "Rybicki, James E. (DO) (FBI)" <James.Rybicki@ic.fbi.gov> [redacted] (DO) (FBI)" [redacted] (IR) (FBI)" [redacted] "Steinbach, Michael B. (DO) (FBI) [redacted] "Turgal, James L. (DO) (FBI)" [redacted] (IR) (FBI)" [redacted]
Subject: DIRECTOR'S WEEKEND REPORT 10/30/2016

b7E -4

b6 -1
b7C -1

ALCON,

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Director's Weekend Report:

Criminal, Cyber, Response and Services Branch

CYBER DIVISION

(U) Cyber Operations Section III (CyOS III):

(U) On 10/30/2016, WikiLeaks released 701 emails in Part 23 of its Podesta release, bringing the total emails released so far to 36,891.

Emergency Action Specialist [redacted]
Supervisory Special Agent [redacted]
Strategic Information & Operations Center (SIOC)
FBIHQ, Room 5712
[redacted]

b6 -1
b7C -1

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Document ID: 0.7.562.589470

FBI-DOJ-OIG-UNET-ELECT-0000630222

FBI 18-cv-01766-2458

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Friday, March 16, 2018 7:34 AM
To: 'Blier, William M.(OIG)'
Subject: RE: Emails

Weirdest thing. There it is, correct address, I never got it. It is not in my IN box, it is not in my (accidentally) deleted box. Anyway, thank you. I'm not sure that it matters to them anymore but I did want to get back.

From: Blier, William M.(OIG) [mailto:William.Blier@usdoj.gov]
Sent: Friday, March 16, 2018 7:29 AM
To: Will, Candice M. (DO) (FBI) [redacted]
Subject: Fwd: Emails

b6 -1
b7C -1

Here it is.

Sent from my iPhone

Begin forwarded message:

> **From:** "Blier, William M.(OIG)" <wblier@OIG.USDOJ.GOV>
> **Date:** March 15, 2018 at 3:17:33 PM EDT
> **To:** "Will, Candice M. (DO) (FBI)" [redacted]
> **Cc:** "Schools, Scott (ODAG)" <sschools@jmd.usdoj.gov>
> **Subject: Emails**
>
> Candice,
> The attached is the only additional Comey [redacted] email we found for 10/30/2016. Our review is completed.
>
> Thanks. Bill

b6 -1
b7C -1

b6 -2
b7C -2

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Blier, William M.(OIG) <William.Blier@usdoj.gov>
Sent: Friday, March 16, 2018 7:29 AM
To: Will, Candice M. (DO) (FBI)
Subject: Fwd: Emails
Attachments: 2018_03_15_14_25_06.pdf; ATT00001.htm

Here it is.

Sent from my iPhone

Begin forwarded message:

> **From:** "Blier, William M.(OIG)" <wblier@OIG.USDOJ.GOV>
> **Date:** March 15, 2018 at 3:17:33 PM EDT
> **To:** "Will, Candice M. (DO) (FBI)" [redacted]
> **Cc:** "Schools, Scott (ODAG)" <sschools@jmd.usdoj.gov>
> **Subject: Emails**
>
> Candice,
> The attached is the only additional Comey [redacted] email we found for 10/30/2016. Our review is completed.
>
> Thanks. Bill

b6 -1
b7C -1

b6 -2
b7C -2

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Will, Candice M. (DO) (FBI)

b6 -1
b7C -1

From: Blier, William M.(OIG) <William.Blier@usdoj.gov>
Sent: Thursday, March 15, 2018 12:30 PM
To: Will, Candice M. (DO) (FBI)
Cc: Schools, Scott (ODAG) (JMD)
Subject: FW: Emails
Attachments: [redacted] email to Comey Oct 30 2016 (Dir Weekend Rpt).pdf; [redacted] email to Comey Oct 30 2016 (conf call).pdf

b6 -2
b7C -2

Candice,
The two attached emails are from Comey emails we received much earlier in our review that were provided in response to search terms. That collection was readily searchable. The Comey emails we received earlier this week, which is a broader collection because that request was not limited by search terms, are not as readily searchable, but we are currently reviewing them to determine if there are any other emails responsive to this request. We expect to have that search completed this afternoon.

Thanks. Bill

b6 -1
b7C -1

From: Will, Candice M. (DO) (FBI) [mailto: [redacted]
Sent: Thursday, March 15, 2018 9:58 AM
To: Blier, William M.(OIG) <wblier@OIG.USDOJ.GOV>
Cc: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: FW: Emails

Bill,

Can you assist w/ bolded below? Thanks.

Candice

b6 -3
b7C -3

From: Michael Bromwich [mailto: [redacted]
Sent: Thursday, March 15, 2018 9:54 AM
To: Will, Candice M. (DO) (FBI) [redacted]
Cc: Bromwich, Michael R. [redacted] Schools, Scott (ODAG) (JMD) <Scott.Schools@usdoj.gov>
Subject: Re: Emails

b6 -1
b7C -1

b6 -3
b7C -3

Thanks, Candice. Some of the emails are relevant, and one of them causes us to make a narrow supplemental request. Please provide us with **any emails between** [redacted] **and Director Comey on Sunday, October 30.**

b6 -2
b7C -2

Thanks very much.

MRB

On Thu, Mar 15, 2018 at 7:24 AM, Will, Candice M. (DO) (FBI) [redacted] wrote:

b6 -1
b7C -1

Good morning, Michael and Eric,

I have one final delivery pertaining to your requests for additional documents. It is the third and final batch of emails between Comey and McCabe from 10/21-31/2016, which we received from the OIG yesterday afternoon and have been processed by the Bu's redaction unit. The only part of batch 3 that you are not receiving are duplicates of emails contained in OIG's batch 2, which we also did not give you because they have nothing to do with the present matter, only with personnel matters, SAC performance ratings, etc. In fact, the emails you are receiving this morning may be a bit wide of the mark, but we are erring on the side of expansive disclosure given the time constraints. This third and final batch is being delivered to your respective offices first thing this morning. Thank you.

Candice

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: [redacted]
b6 -3
b7C -3
Sent: Thursday, March 15, 2018 7:26 AM
To: Will, Candice M. (DO) (FBI); Bromwich, Michael R.; Michael R. Bromwich
Cc: Schools, Scott (ODAG) (JMD)
Subject: RE: Emails

Thank you, Candice.

Eric B. Bruce
[redacted] (Washington DC)
(New York)
b6 -3
b7C -3

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b6 -1
b7C -1

From: Will, Candice M. (DO) (FBI) [mailto [redacted]
Sent: Thursday, March 15, 2018 7:24 AM
To: Bromwich, Michael R [redacted] Michael R. Bromwich
[redacted] Eric Bruce [redacted]
b6 -3
b7C -3
Cc: Schools, Scott (ODAG) (JMD) <Scott.Schools@usdoj.gov>
Subject: Emails

Good morning, Michael and Eric,

I have one final delivery pertaining to your requests for additional documents. It is the third and final batch of emails between Comey and McCabe from 10/21-31/2016, which we received from the OIG yesterday afternoon and have been processed by the Bu's redaction unit. The only part of batch 3 that you are not receiving are duplicates of emails contained in OIG's batch 2, which we also did not give you because they have nothing to do with the present matter, only with personnel matters, SAC performance ratings, etc. In fact, the emails you are receiving this morning may be a bit wide of the mark, but we are erring on the side of expansive disclosure given the time constraints. This third and final batch is being delivered to your respective offices first thing this morning. Thank you.

Candice

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b7C -1

Will, Candice M. (DO) (FBI)

From: Michael Bromwich [redacted] b6 -3 b7C -3
Sent: Thursday, March 15, 2018 7:29 AM
To: Will, Candice M. (DO) (FBI)
Cc: Bromwich, Michael R. [redacted] Schools, Scott (ODAG) (JMD) b6 -3 b7C -3
Subject: Re: Emails

Thank you.

MRB

On Thu, Mar 15, 2018 at 7:24 AM, Will, Candice M. (DO) (FBI) [redacted] wrote: b6 -1 b7C -1

> Good morning, Michael and Eric,
>
> I have one final delivery pertaining to your requests for additional documents. It is the third and final batch of emails between Comey and McCabe from 10/21-31/2016, which we received from the OIG yesterday afternoon and have been processed by the Bu's redaction unit. The only part of batch 3 that you are not receiving are duplicates of emails contained in OIG's batch 2, which we also did not give you because they have nothing to do with the present matter, only with personnel matters, SAC performance ratings, etc. In fact, the emails you are receiving this morning may be a bit wide of the mark, but we are erring on the side of expansive disclosure given the time constraints. This third and final batch is being delivered to your respective offices first thing this morning. Thank you.
>
> Candice

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b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Thursday, March 15, 2018 7:24 AM
To: 'Bromwich, Michael R.'; Michael R. Bromwich; [redacted]
Cc: Schools, Scott (ODAG) (JMD)
Subject: Emails

b6 -3
b7C -3

Good morning, Michael and Eric,

I have one final delivery pertaining to your requests for additional documents. It is the third and final batch of emails between Comey and McCabe from 10/21-31/2016, which we received from the OIG yesterday afternoon and have been processed by the Bu's redaction unit. The only part of batch 3 that you are not receiving are duplicates of emails contained in OIG's batch 2, which we also did not give you because they have nothing to do with the present matter, only with personnel matters, SAC performance ratings, etc. In fact, the emails you are receiving this morning may be a bit wide of the mark, but we are erring on the side of expansive disclosure given the time constraints. This third and final batch is being delivered to your respective offices first thing this morning. Thank you.

Candice

ALL INFORMATION CONTAINED
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DATE 08-31-2018 BY [redacted] NSICG b6 -1
b7C -1

Will, Candice M. (DO) (FBI)

From: Michael Bromwich [redacted] b6 -3 b7C -3
Sent: Friday, March 16, 2018 2:40 PM
To: Will, Candice M. (DO) (FBI)
Subject: Fwd: Andrew McCabe
Attachments: 2018 03 16 Letter to S. Schools re OPR Proposal.pdf

Candice, below is the cover note I sent to Scott Schools about at noon today as a follow-up to the meeting we had with him yesterday. As you can see, it includes recognition of how helpful you have been over the past 10 days. I want to extend my thanks to you for your professionalism and your assistance over the past 10 days.

Warm regards.

MRB

---------- Forwarded message ----------
From: **Michael Bromwich** [redacted] b6 -3 b7C -3
Date: Fri, Mar 16, 2018 at 12:10 PM
Subject: Andrew McCabe
To: "Schools, Scott (ODAG) (JMD)" <Scott.Schools@usdoj.gov>
Cc: Eric Bruce [redacted] Andrew McCabe b6 -1,3 b7C -1,3
[redacted]

Dear Scott:

I wanted to thank you again for making the time to meet with Mr. McCabe, Eric Bruce, and me yesterday afternoon to hear from Mr. McCabe and from us about the allegations in the OIG Report and the FBI Proposal. Attached is our written submission on this matter.

Although I know you have dealt with Mr. McCabe on business matters in the past, you had the extraordinary opportunity yesterday to hear him squarely address the specific allegations in the OIG report and the FBI OPR proposal and give you his best recollection of the events that form the basis for the charges against him. He answered every question, from you and from me, and his answers were responsive, complete, and entirely credible.

I am extremely troubled about the rush to judgment -- and the rush to finality -- that has characterized this process. As we outlined for you yesterday towards the end of the meeting, we were only given access to a draft OIG report on February 21, were required to make an oral presentation and defense to the OIG on February 23, and were required to submit written comments by February 26. By any measure, this was a rushed process that precluded us from being able to speak to witnesses and develop evidence that countered the allegations against Mr. McCabe.

We were first given access to the FBI-OPR administrative file on Friday, March 6. Although Candice Will has shown us every courtesy and been diligent, professional, and prompt in responding to our numerous requests for additional relevant evidence, it has been virtually impossible for us to review the extensive administrative record, prepare for yesterday's meeting, and develop the attached written submission. Moreover, as we have advised you, Mr. McCabe did not return to town until Tuesday

evening, cutting short a long-planned family vacation. This rush to the finish line is extremely unfortunate and quite unfair. You put your finger on one aspect of the unfairness at the end of yesterday's session -- we have not had the time to contact and speak with witnesses whom we believe would support Mr. McCabe's defense against the charges. We would need far more time to do so.

Separate and apart from our profound concerns about the process, which by themselves should prevent this train from racing ahead, we believe that on these facts, on this record, and for the substantive reasons provided at length in the written submission, it would be deeply unfair to uphold FBI OPR's proposal to terminate Mr. McCabe. It would be deeply unfair to him and to his family, but it would also send a profoundly troubling message to the DOJ and FBI workforce. Mr. McCabe's career is long, distinguished, and unblemished. He embraced the most daunting, difficult, and important challenges that the FBI and this country could throw his way over the past 21 years. He served this country with courage and distinction in the days following the President's summary dismissal of Director Comey, in one of the most turbulent periods in the Bureau's history.

We think we have made a powerful case that the charges are unsupported by the evidence and that the OIG's conclusions and the FBI-OPR proposal to terminate Mr. McCabe lack any understandable motive for his alleged wrongdoing. Mr. McCabe fully explained yesterday that the allegations of lack of candor are more properly understood as the result of misunderstanding, miscommunication, and honest failures of recollection based on the swirl of events around him. Again, Mr. McCabe had no motive to lie or mislead about media contacts he had the authority to direct, he made no effort to coordinate accounts of the events in question with [redacted] or [redacted] and several of the charges rest on the flawed and equivocal testimony of former Director Comey. b6 -2 b7C -2

Even if you were to find that one or more of the charges are supported, the sanction of termination in this case would be deeply unfair. As we mentioned yesterday, and as set forth in the written submission, we are aware of numerous cases in which substantiated lack of candor cases resulted in sanctions far less than termination. In the full context of this case, where FBI OPR has acknowledged that Mr. McCabe provided "21 years of remarkable FBI service and...[demonstrated a] truly outstanding performance," and that he was "facing unprecedented and unimaginable pressures and challenges," we believe mitigation of the sanction would be the fair, just, and entirely appropriate result.

As I mentioned yesterday, if you decide to accept FBI OPR's proposal, we request an in-person meeting with the Attorney General.

Please let me know if you have any questions.

Thank you.

MRB

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ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

1801 K STREET, N.W., SUITE 411 L
WASHINGTON, D.C. 20006
PHONE (202) 775-4500
FAX (202) 775-4510
www.robbinsrussell.com

Michael R. Bromwich

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[redacted]

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March 16, 2018

CONFIDENTIAL FOIA TREATMENT REQUESTED

BY ELECTRONIC MAIL

Scott N. Schools, Esq.
Associate Deputy Attorney General
U.S. Department of Justice
RFK Main Building, Room 4111
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: FBI Deputy Director Andrew G. McCabe

Dear Mr. Schools:

We respectfully submit this response to your letter, dated March 8, 2018, concerning the March 7, 2018 proposal (the "Proposal") by the Federal Bureau of Investigation's Office of Professional Responsibility ("OPR") to remove FBI Deputy Director Andrew G. McCabe.

Mr. McCabe vigorously rejects the findings that form the basis for the Proposal. For the reasons set forth below, and in the oral presentation we provided to you on March 15, 2018, we respectfully submit that those findings are unsupported by the evidence and ask you to reject them in making your final determination in this matter.

Further, based on the weakness of the evidence supporting the alleged violations of FBI Offense Codes 2.6 and 2.5, the substantial doubt surrounding the conclusions reached by the Office of the Inspector General ("OIG"), and the very real possibility that misunderstandings, miscommunication, and honest failures of recollection occurred during a period of time when Mr. McCabe was, by OPR's admission, "facing unprecedented and unimaginable pressure and challenges," we respectfully request that you find that termination is entirely inappropriate under the circumstances, especially given Mr. McCabe's long and distinguished career in the FBI.

A. OPR's Finding of Lack of Candor – Under Oath

To establish a violation of FBI Offense Code 2.6, there must be sufficient evidence of an employee "***[k]nowingly*** providing false information in a verbal or written statement made under oath" (emphasis added). In the Proposal, OPR found that Mr. McCabe violated FBI Offense Code 2.6 in his interviews with OIG on November 29, 2017 and July 28, 2017. Those findings are unwarranted for the reasons set forth below.

1. Interview with OIG on November 29, 2017

With respect to the November 29, 2017 OIG interview, there is no basis for a finding of intentional misconduct regarding (a) Mr. McCabe's statements to OIG about his interaction with former Director Comey regarding the disclosure that Mr. McCabe authorized in connection with the article that was initially published online in the *Wall Street Journal ("WSJ")* on October 30, 2016 and in the print edition on October 31; or (b) Mr. McCabe's statements regarding his recollection of what he said in his May 9 INSD interview about authorizing the disclosures to the *WSJ*.

i. Mr. McCabe's Statements Regarding the October 31, 2016 Conversation with Director Comey

A lack of candor finding based on Mr. McCabe's recollection of the conversation with Director Comey is unwarranted for a number of reasons.

First, as a threshold matter, a lack of candor finding is inappropriate where, as here, there was an informal conversation between only two parties and the other party repeatedly admits that he does not recall the conversation. *See Weiler v. United States*, 323 U.S. 606, 607 (1945) ("'The general rule in prosecutions for perjury is that the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused . . .'" (quoting *Hammer v. United States*, 271 U.S. 620, 626[illegible]118)). [redacted]

b7A Per DOJ/OIG

a. [redacted]

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[redacted]

- "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." (Comey Tr. 305:4-6, [redacted]

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[redacted] For this reason alone, the lack of candor finding is unwarranted.

Second, the evidence (and particularly the evidence that we received within the last two days), strongly corroborates Mr. McCabe's testimony that he made Director Comey aware of the disclosure. The evidence demonstrates the following:

- On October 21, 2016, Mr. McCabe informed Director Comey, as well as Director Comey's Chief of Staff, James Rybicki, and David Bowdich, that an article by Devlin Barrett about Mr. McCabe's involvement in "Midyear" (the Clinton email investigation) and Dr. McCabe's campaign was forthcoming in the *WSJ*. He further stated, "I will work with [FBI Assistant Director for Public Affairs Michael Kortan] to ***provide some basic facts to push back***. And, as always, will keep you advised" (emphasis added). Director Comey responded, "Outstanding."

- On October 23, 2016, Mr. McCabe updated Director Comey, Mr. Rybicki and Mr. Bowdich on the status of his interactions with Barrett, stating "Mike K and I spent a good part of the day ***trying to shape the WSJ story*** on my alleged conflict. . . . The reporter also called Jill for a comment, so we are working that as well" (emphasis added).

- On October 30, 2016, Mr. Kortan emailed Mr. Rybicki, forwarding a detailed summary by Barrett of the contents of the forthcoming article. The summary included all of the main points that would appear in the final article, including the McCabe/Matthew Axelrod interaction. The underlying email from Devlin Barrett reflects that he had previously discussed the McCabe/Axelrod call with Mr. Kortan. The subject line of the email is "story is filed to my NY editors," reflecting that they had previously discussed at least some part of the story. Further, in notable contrast to the rest of the email in which Mr. Barrett appears to provide new information about the story to Mr. Kortan, he does not provide any background about the McCabe/Axelrod call, and instead provides a brief update that the story will "have more color from the Aug 12 McCabe-Axelrod call," and notes that "at present I'm disinclined to name Axelrod." Mr. Kortan made no attempt to hide from Rybicki the fact that he had discussed the McCabe-Axelrod call with the media. To the contrary, he promptly provided this information to the Director's Chief of Staff before the article was posted.

[redacted]

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b6 -1,2, Per DOJ/OIG
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b7C -1,2, Per DOJ/OIG

Taken together, this evidence corroborates Mr. McCabe's account that he kept Director Comey updated regarding his communications with the *WSJ*, that the Director knew that he and Mr. Kortan were providing information to the *WSJ* in order to shape those stories, and that Mr. McCabe had no reason to hide this fact from Director Comey based on their prior interactions.

Finally, Director Comey's inability to recall a very brief conversation with Mr. McCabe, possibly lasting no more than a minute or two, is understandable given the context and time period in which it occurred. This conversation took place in the chaotic period immediately following Director Comey's October 28, 2016 letter to Congress and the expedited investigation of the Weiner laptop, so it is likely that Director Comey simply did not recall Mr. McCabe's comments to him because he was focused on other pressing, and far more important, matters. As Mr. McCabe made clear during yesterday's presentation, there were many more pressing issues on Director Comey's mind that day. In short, Mr. Comey's testimony, contradicted by Mr. McCabe's, cannot be relied on to support a finding of lack of candor.

ii. Mr. McCabe's Statements Regarding the May 9, 2017 INSD Interview

A lack of candor finding based on Mr. McCabe's recollection in his OIG interview of the INSD interview is also unwarranted.

First, OPR overlooked substantial evidence that Mr. McCabe's statements reflected an understandably imprecise, but genuinely held, recollection by Mr. McCabe of the underlying events. As OPR acknowledged, Mr. McCabe was questioned about a time period when he was "facing unprecedented and unimaginable pressure and challenges." Proposal at 15. Just hours after what the INSD investigators testified was a brief discussion with Mr. McCabe regarding the *WSJ* article, Mr. McCabe was informed that Director Comey had been fired and that he was the new Acting Director the FBI. In the days and weeks that followed, he had to abruptly assume responsibility for leadership of the entire Bureau in a tumultuous period of uncertainty and political turmoil.

Notably, OIG described the statements that Mr. McCabe made in the November 29, 2017 interview describing the INSD interaction as a brief discussion that took place at the end of a meeting on a different topic, made findings that the description was inaccurate, and concluded

that Mr. McCabe was intentionally deceitful about the meeting. In fact, the evidence

[redacted]

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Second, OPR overlooked substantial evidence that Mr. McCabe's statements reflected a simple misunderstanding and/or miscommunication with the INSD agents. [redacted]

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Additionally, the *WSJ* article that INSD asked Mr. McCabe to review contained not one but 24 separate facts and quotes from anonymous FBI sources, including references to sources who incorrectly stated that Mr. McCabe gave a "stand down" instruction on the Clinton Foundation investigation. Even if the INSD agents walked away from that discussion with an understanding that Mr. McCabe was specifically and exclusively referring to the Axelrod call while they were discussing the source of the "leaks" in the article, there is no evidence that Mr. McCabe had the same understanding. The most reasonable inference is that, in a short conversation at the end of a meeting set to discuss a different topic, where Mr. McCabe was nevertheless asked to review an article with 24 leaks, there was a simple miscommunication.

The fact that there was a miscommunication is further supported by the fact that Mr. McCabe later told the INSD agents that the summary they prepared of the conversation was inaccurate. The draft SSS did not implicate him in the disclosure, so if he had wanted to

disclaim responsibility, he could have simply signed the SSS. The fact that he refused to sign an inaccurate summary of his May 9 INSD interview belies OPR's finding that he was engaged in a cover up.

Finally, there is absolutely no evidence of any collusion or a conspiracy to hide the fact that Mr. McCabe authorized the disclosure of the Axelrod call. The purpose of the disclosure was to correct the reporter's misimpression that McCabe had directed that the FBI stand down from the Clinton Foundation investigation. Mr. McCabe had the authority to direct that the disclosure be made, he directed [redacted] and [redacted] to make it, and he never sought to keep secret the fact that he had done so. Indeed, if Mr. McCabe had any intention of covering up the disclosure or obstructing the investigation, he would have needed to communicate with the people whom he had authorized to make the disclosure [redacted] and [redacted] to tell them not to say anything about it. [redacted] and indeed you have advised us that this is uncontested. Put simply, it would have made no sense for Mr. McCabe to knowingly lie to the INSD agents without also asking [redacted] and [redacted] to lie about these events—which he did not do. And in the absence of any evidence that he discouraged others from sharing information about the disclosure, Mr. McCabe had absolutely no motive to lie to the INSD about his authorization of the disclosure, and no motive to lie to OIG about it. He did not do so.

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Accordingly, there is no basis for a finding of intentional misconduct based on the November 29, 2017 OIG interview.

2. Interview with OIG on July 28, 2017

The finding that Mr. McCabe deliberately tried to mislead OIG investigators in his July 28, 2017 interview is similarly unsupported by the facts.

First, the highly unusual circumstances surrounding the July 28 interview (which are not recounted anywhere in the OPR Proposal) undermine the conclusion that Mr. McCabe engaged in any type of intentional misconduct. Even though Mr. McCabe was the Acting Director of the FBI at the time, [redacted] Mr. McCabe expressed to OIG that he wanted to be represented by counsel when questioned about matters in which he was involved [redacted] the OIG investigators shared with Mr. McCabe information that he found truly startling about the existence of a large volume of highly inflammatory and sensitive text messages between two of his colleagues, [redacted] and [redacted] He immediately began to process this information and start to think about what steps he needed to take immediately as Acting Director to protect ongoing, highly-sensitive FBI investigations. As the interview progressed, the OIG attorneys began to question Mr. McCabe regarding matters involving his

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own conduct, which was contrary to his understanding of what would occur during the interview. Mr. McCabe was confused as to why the OIG attorneys were asking him about matters involving his own conduct, contrary to his understanding of his prior agreement with them, and while trying to object to the line of questioning, made statements regarding [redacted] authorization to speak to the *WSJ* reporter. Under these highly unusual circumstances, an inference that Mr. McCabe was attempting to be intentionally deceptive is unwarranted. *United States v. Dunnigan*, 507 U.S. 87, 94 (1993) (holding that a perjury prosecution requires proof of specific intent, that is, that the defendant made the false statement with knowledge of its falsity, rather than as a result of confusion, mistake or faulty memory).

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As Mr. McCabe explained during his testimony yesterday, the OIG attorneys repeatedly showed him text messages, which he had not sent or received, and asked him to explain what the participants intended or were referring to in those texts. As countless lawyers have counseled countless witnesses in these types of situations, Mr. McCabe (without his own counsel present to advise him) was trying not to speculate about what others intended or were doing. [redacted] stating that he was not in town during those days, and therefore couldn't say where [redacted] was or what she was doing. Although Mr. McCabe was out of town during this time period and could not possibly have known everything that [redacted] was doing during this weekend, Mr. McCabe became concerned he had left the misimpression with the OIG attorneys and promptly acted to clarify any misimpression.

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Second, to the extent that he had misspoken during the July 28 interview, Mr. McCabe affirmatively took steps to clarify his responses promptly after the interview, which is completely inconsistent with any deliberate effort to mislead. As OIG correspondence confirms, as soon as Mr. McCabe had a chance to reflect on the interview, [redacted] he voluntarily contacted OIG to clarify any potential miscommunication or misunderstanding about the *WSJ* article, confirmed that he was traveling at the time of the *WSJ* article, and informed OIG that they could speak to [redacted] if they needed additional information. *See* August 1, 2017 Email from [redacted]

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As courts have stated in the context of perjury cases, evidence of voluntary steps to clarify the record negates an inference of intentional deceit. *See United States v. Norris*, 300 U.S. 564, 576 (1937) ("the correction of an innocent mistake, or the elaboration of an incomplete answer," may "demonstrate that there was no willful intent to swear falsely"); *Beckanstin v. United States*, 232 F.2d 1, 4 (5th Cir. 1956) (reversing perjury conviction and holding that "[w]illingness to correct the misstatement . . . is potent to negative [sic] a willful intent to swear

falsely"); *United States v. Lococo*, 450 F.2d 1196, 1198 n.2 (9th Cir. 1971) ("willingness to correct a misstatement is relevant to the issue of intent").

Third, as noted above, there is no other evidence of any collusion or conspiracy to hide the fact that Mr. McCabe authorized the disclosure. If Mr. McCabe truly had intended to deceive the OIG investigators, not only would he not have clarified his testimony a few days later, he would have needed to ask [redacted] and [redacted] not to be truthful with the OIG investigators when they later testified. The evidence is clear that he did not do so because he had no intent whatsoever to deceive anyone about this matter. b6 -1,2 b7C -1,2

Accordingly, there is no basis for a finding of intentional misconduct based on the July 28, 2017 OIG interview.

B. OPR's Finding of Lack of Candor – No Oath

To establish a violation of FBI Offense Code 2.5, there must be sufficient evidence of an employee:

> ***Knowingly*** 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.

(emphasis added). In the Proposal, OPR found that Mr. McCabe violated FBI Offense Code 2.5 during his October 31, 2016 conversation with Director Comey and the May 9, 2017 interview with INSD. Those findings are unwarranted for the reasons set forth at length above.

C. OPR's Finding of Unauthorized Disclosure

To establish a violation of FBI Offense Code 4.10, there must be sufficient evidence of an employee "***[w]ithout authorization***, disclosing or attempting to disclose the FBI's, or another agency's, sensitive material" (emphasis added). In the Proposal, OPR found that Mr. McCabe violated FBI Offense Code 4.10 based on an unspecified "general prohibition" on disclosing information about an ongoing criminal investigation and certain statements made by Director Comey. Proposal at 14. That finding is unsupported by the evidence for the reasons set forth below.

First, a violation of FBI Offense Code 4.10 is inappropriate as a legal matter because there is no evidence that Mr. McCabe made any disclosure "without authorization." As Deputy Director, Mr. McCabe was authorized to make and coordinate disclosures of information to the media. *See* Media Relations at FBIHQ and in Field Offices Policy Guide, § 3.1: Authorization of Federal Bureau of Investigation Personnel to Make and Coordinate Disclosures and Information Releases to the Media.

[redacted] b7A Per DOJ/OIG

[redacted] Director Comey even qualified that "unless [he] authorized it or Deputy Director McCabe authorized it, [he] considered it an unauthorized disclosure." Comey Tr. 302:13-15, [redacted] The fact that Mr. McCabe's judgment on the *WSJ* disclosure may have differed from Director Comey's does not make Mr. McCabe's decision unauthorized.

Second, the Clinton Foundation investigation had been publicly reported for months before the disclosure in the October 30, 2016 *WSJ* article,[1] and the *WSJ* article itself contained numerous acknowledgements from other FBI sources that the FBI had opened a criminal investigation into the Clinton Foundation. In fact, the only reason Mr. McCabe felt the need to make a disclosure, in order to protect the reputation and integrity of the FBI, was to rebut the false narrative coming from anonymous FBI sources regarding the status of the investigation. Mr. McCabe's authorization to provide information that was designed to combat the destructive and false narrative of FBI political bias was motivated solely by a desire to protect the institution that he loves and to which he has dedicated his entire professional life. Faced with the decision whether to leave the false narrative uncorrected, or provide information that tended to counter the suggestion that the FBI was buckling to political pressure, Mr. McCabe made a judgment call, which he had the clear authority to make, that the disclosure of the limited amount of information to the *WSJ* was in the best interests of the FBI.

D. Prior OPR Precedent

As part of the due process accorded FBI personnel facing potential discipline, OPR shared with us limited information on cases it has previously handled involving similar allegations against FBI personnel. Despite the assertion in the March 7, 2018 letter that, "all FBI employees know that lacking candor under oath results in dismissal," the cases show that is not consistently the case. Illustrative examples include the following:

- In OPR Case No. [redacted] b6 -1 b7C -1

[1] *See, e.g.*, Catherine Herridge & Pamela K. Brown, FBI's Clinton probe expands to public corruption track, FOX NEWS (Jan. 11, 2016), http://www.foxnews.com/politics/2016/01/11/fbis-clinton-probe-expands-to-public-corruption-track.html; S.A. Miller, Obama admin blocked FBI probe of Clinton Foundation corruption: Report, THE WASHINGTON TIMES (Aug. 11, 2016), https://www.washingtontimes.com/news/2016/aug/11/obama-admin-blocked-fbi-probe-clinton-foundation/; Drew Griffin, Pamela Brown & Shimon Prokupecz, First on CNN: Inside the debate over probing the Clinton Foundation, CNN (Aug. 11, 2016, 4:23 PM), https://www.cnn.com/2016/08/11/politics/hillary-clinton-state-department-clinton-foundation/index.html; Richard Pollock, Exclusive: Joint FBI-US Attorney Probe of Clinton Foundation is Underway, THE DAILY CALLER (Aug. 11, 2016, 10:36 PM), http://dailycaller.com/2016/08/11/exclusive-joint-fbi-us-attorney-probe-of-clinton-foundation-is-underway/.

- In OPR Case No. [redacted] b6 -1 b7C -1

- In OPR Case No. [redacted] b6 -1 b7C -1

These three cases are merely illustrative. We found a number of additional cases in which OPR found an employee to have lied under oath, OPR proposed dismissal, and a lesser sanction was imposed. These cases demonstrate that the FBI has on a number of occasions exercised its discretion to take mitigating factors into account and substitute a lesser sanction than dismissal.

Thus, even if you were to find, contrary to the evidence, that Mr. McCabe knowingly lied under oath, the Department has the discretion to impose a lesser sanction. In light of OPR's acknowledgement that Mr. McCabe has "21 years of remarkable FBI service and [has shown] truly outstanding performance," and at the time of the events in question was "facing unprecedented and unimaginable pressures and challenges," (March 7, 2018 letter at 15), you should exercise that discretion in Mr. McCabe's favor and impose a sanction other than dismissal. That is the fair, just, and humane result.

E. Conclusion

For the reasons stated above, we respectfully submit that any findings of intentional misconduct are inappropriate here.

Respectfully submitted,

Michael R. Bromwich / CKE

Michael R. Bromwich

cc: Eric B. Bruce, Kobre & Kim

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DATE 09-04-2018 BY [redacted] NSICG

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Will, Candice M. (DO) (FBI)

From: Schools, Scott (ODAG) <Scott.Schools@usdoj.gov>
Sent: Tuesday, March 20, 2018 1:02 PM
To: Will, Candice M. (DO) (FBI)
Subject: RE: McCabe Matter
Attachments: Final Decision.pdf

I agree. Here you go.

Scott

From: Will, Candice M. (DO) (FBI) [mailto: [redacted]
Sent: Tuesday, March 20, 2018 12:58 PM
To: Schools, Scott (ODAG) <sschools@jmd.usdoj.gov>
Subject: McCabe Matter

b6 -1
b7C -1

Good afternoon, Scott,

We are ensuring that our file is complete and ready for retirement to the closed files room. I have Mr. Bromwich's 3/16 response to DOJ. I do not, however, have any DOJ documents. Is there anything you would want to add to the official file in this matter? It would certainly seem the AG's final decision should be part of the official record. Thank you for your consideration.

Candice

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DATE 09-04-2018 BY [redacted] NSICG

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Will, Candice M. (DO) (FBI)

From: Will, Candice M. (DO) (FBI)
Sent: Tuesday, March 20, 2018 12:58 PM
To: Schools, Scott (ODAG) (JMD)
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Good afternoon, Scott,

We are ensuring that our file is complete and ready for retirement to the closed files room. I have Mr. Bromwich's 3/16 response to DOJ. I do not, however, have any DOJ documents. Is there anything you would want to add to the official file in this matter? It would certainly seem the AG's final decision should be part of the official record. Thank you for your consideration.

Candice

U.S. Department of Justice

Office of the Deputy Attorney General

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b7C -1

Washington, DC 20530

March 16, 2018

By e-mail amg.dd@fbi.gov
Andrew G. McCabe
[redacted] b6 -1
b7C -1

Mr. McCabe,

Enclosed please find the Attorney General's written decision on the Federal Bureau of Investigation's proposal for your removal.

Sincerely yours,

Scott N. Schools
Associate Deputy Attorney General

Enclosure

cc:

By e-mail [redacted] b6 -3
b7C -3
Michael R. Bromwich, Esq.
Senior Counsel
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
1801 K Street, NW, Suite 411L
Washington, D.C. 20006

By e-mail [redacted] b6 -3
b7C -3
Eric B. Bruce, Esq.
Kobre & Kim LLP
1919 M Street, NW
Washington, D.C. 20036

U.S. Department of Justice

Office of the Deputy Attorney General

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DATE 09-04-2018 BY [redacted] NSIC b6 -1
b7C -1

Associate Deputy Attorney General

Washington, D.C. 20530

March 16, 2018

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Scott Schools
Associate Deputy Attorney General

SUBJECT: Proposed Removal of Andrew G. McCabe from the FBI

PURPOSE: To provide a recommendation regarding the proposed removal of FBI Deputy Director Andrew G. McCabe

TIMETABLE: As soon as possible.

DISCUSSION:

On March 7, 2018, Candice M. Will, Assistant Director of the Office of Professional Responsibility of the Federal Bureau of Investigation (FBI), proposed that Andrew G. McCabe be dismissed from the FBI. Ms. Will's proposal resulted from her determination that Mr. McCabe (A) lacked candor under oath on two occasions in violation of FBI Offense Code 2.6; (B) lacked candor not under oath on two different occasions in violation of FBI Offense Code 2.5; and (C) made an unauthorized disclosure in violation of FBI Offense Code 4.10.

Mr. McCabe was notified of the proposal on or about March 7, 2018, and on March 8, 2018, Mr. McCabe and his counsel were advised of their right to provide to me an oral and/or written response to the proposal by March 15, 2018. On March 14, 2018, I extended the time for filing the written response to March 16, 2018 at noon. On March 15, 2018, Mr. McCabe and his counsel presented an oral response to the proposal, and I timely received the written response.

Mr. McCabe and his counsel were provided documents on which Ms. Will relied in making her proposal. Those documents included a report from the Office of Inspector General (OIG) pertaining to the conduct in question and documents underlying that report, including witness transcripts or relevant portions thereof, and other relevant documents. Ms. Will's charges were consistent with the conclusions of the Inspector General. Mr. McCabe's counsel made requests for additional documents during the course of their preparation of the responses. The Department accommodated each of those requests. On March 15, 2018, Mr. McCabe and his counsel presented their oral response to the proposal for approximately four hours. On March 16, 2018, Mr. McCabe through counsel submitted a written response to the proposal.

I have reviewed the entire record and carefully considered Mr. McCabe's oral and written responses. I incorporate Ms. Will's proposal by reference except to the extent specifically noted below. I recommend the following:

A. Lack of Candor Under Oath

1. Interview with the OIG on July 28, 2017

During an OIG interview on July 28, 2017, Mr. McCabe was questioned about an October 30, 2016 Wall Street Journal (WSJ) article that reported a conversation that Mr. McCabe had with a Senior Department Official (SDO), in which Mr. McCabe reportedly asked the SDO whether the SDO was directing the FBI to shut down a validly predicated investigation. The OIG showed Mr. McCabe the article and asked about text messages between Employee A and a third employee, the content of which indicated that Employee A was on the phone with the WSJ reporter on October 27 and 28, two days before the WSJ article. In response to being confronted with the article and text messages, Mr. McCabe stated, [redacted] b7A Per DOJ/OIG I was not even in town during those days, so I can't tell you where [Employee A] was or what [Employee A] was doing." Mr. McCabe subsequently acknowledged that he authorized two of his subordinates (Employees A and B) to disclose the substance of the communication to the WSJ "on background."

In a November 29, 2017 interview with the OIG, Mr. McCabe recounted in significant detail the events leading up to the WSJ article, including his specific authorization of Employees A and B to contact the WSJ, and disclose the details of the conversation with the SDO [redacted] b7A Per DOJ/OIG

In light of the level of involvement Mr. McCabe had with Employees A and B regarding the article, the extensive phone calls he had with Employee A during the relevant time period, and the details regarding these events that he provided during his subsequent OIG interview, I find that a preponderance of the evidence supports the conclusion that his statement in the July 28, 2017 OIG interview that he did not know what Employee A was doing on the days in question was knowingly false.

Mr. McCabe advised that on July 28, 2017 [redacted] b7A Per DOJ/OIG However, the transcript also reflects that the OIG advised Mr. McCabe that the interview was voluntary. Therefore, Mr. McCabe could decline to answer the questions or answer them honestly. His statement denying knowledge of Employee A's activities in connection with the discussion of the October 30, 2016 article was false.

On August 1, 2017, Mr. McCabe advised the OIG that he had authorized Employees A and B to provide information that formed the basis of the October 30, 2016 article. The lack of significant notice that Mr. McCabe had in advance of the interview, his inability to contact his counsel prior to the interview, and his contacting the OIG four days after he provided false

FBI 18-cv-01766-2519

information under oath to correct the record mitigate the seriousness of the offense. Nonetheless, I recommend that you sustain the charge that Mr. McCabe lacked candor under oath in the July 28, 2017 OIG interview.

2. Interview with the OIG on November 29, 2017

The proposing official found that Mr. McCabe lacked candor in two respects in connection with his OIG interview on November 29, 2017. First, Ms. Will found that Mr. McCabe lacked candor when he told the OIG that he told then-FBI Director James B. Comey on October 31, 2016, that he authorized the disclosure of that portion of the WSJ article that revealed the details of the conversation between Mr. McCabe and the SDO. Mr. McCabe indicated in his testimony before the OIG that he advised Mr. Comey on the morning of October 31, 2016 about the authorization. Mr. Comey denied that Mr. McCabe told him that he had authorized the disclosure to the WSJ. Mr. McCabe points out that Mr. Comey's testimony is uncertain and speculative in many respects. However, Mr. Comey testified:

> [OIG]: He did not tell you that he authorized it.
>
> MR. COMEY: 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.

Mr. Comey's testimony is in some respects vague and speculative. However, his assertion that Mr. McCabe did not affirmatively inform him that he (Mr. McCabe) authorized the disclosure in the October 30, 2016 WSJ article is unequivocal. Mr. Comey's recollection is consistent with other testimony and contemporaneous events. First, the other witnesses from the FBI's front office (except Employee A) testified that they were unaware that Mr. McCabe had authorized the disclosure, despite Mr. McCabe's claim that his authorization of the disclosure was well known. Second, as a result of the October 23, 2016 WSJ article that first reported contributions to Mr. McCabe's wife's political campaign, Director Comey had declined to receive input from Mr. McCabe regarding a particular investigation (Investigation 1) that was related to a second investigation (Investigation 2) that was the subject of the WSJ articles. It seems unlikely that in light of Mr. Comey's assessment about potential recusal issues arising from Mr. McCabe's wife's campaign, he would have been "okay with" Mr. McCabe's having made the decision to authorize the disclosure in the October 30, 2016 WSJ article. Third, that same day, October 31, 2016, Mr. Comey had a meeting with the Attorney General that included a small group. Later that day, a Department of Justice (DOJ) official e-mailed an FBI official to advise that DOJ had received a media inquiry about that very small meeting and that the inquirer had significant detail about the meeting. The DOJ employee denied having disclosed the details of the meeting, implying that the FBI was the source. When advised of the e-mail, Mr. Comey replied, "What? Do they think we're idiots?" This e-mail is inconsistent with Mr. Comey's being "okay with" Mr. McCabe's authorization of the disclosure of a one-on-one conversation between Mr. McCabe and the SDO. Fourth, the FBI's Inspection Division (INSD) opened an unauthorized disclosure investigation regarding the October 30, 2016 article, which seems unlikely to have happened if Mr. Comey and others were aware that Mr. McCabe had authorized the release of the information. Fifth, after publication of the October 30, 2016 the article, the SDO spoke with Mr. McCabe and expressed his view that the release of details regarding his one-on-one

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conversation with Mr. McCabe was not conducive to a good working relationship. Although Mr. McCabe apologized, he did not (by his own admission) tell the SDO that he (Mr. McCabe) had authorized the disclosure. Sixth, even if Mr. McCabe was not expecting INSD to ask him about the October 30, 2016 article during INSD's May 9, 2017 interview, if it were well known that he had authorized the disclosure, it seems unlikely that he would have denied it to INSD. Seventh, the disclosure identified a previously undisclosed FBI investigation as "validly predicated," thereby confirming its existence at a time when the FBI had not previously confirmed the existence of the investigation, and the confirmation occurred just 9 days before a Presidential election that could have been impacted by the disclosure. Finally, after the publication of the article, Mr. McCabe contacted two supervisory FBI agents who were overseeing Investigation 2 to chastise them based on Mr. McCabe's assessment that their subordinates were improperly speaking to the media about the Investigation 2. During these calls, Mr. McCabe did not acknowledge authorizing the disclosure of his conversation with the SDO.

In sum, nothing about Mr. McCabe's immediate or subsequent actions pertaining to the WSJ article suggests that he would have revealed to Mr. Comey that he authorized the release of the information. For all of these reasons, the preponderance of the evidence supports that Mr. McCabe lacked candor when he testified that he told Mr. Comey on October 31, 2016 that he had authorized the release of the information in the October 30, 2016 WSJ article.

Ms. Will also concluded that Mr. McCabe lacked candor in his November 29, 2017 OIG interview when he denied that in his May 9, 2017 INSD interview he told INSD that he did not know who authorized the disclosure in the October 30, 2016 article. By this time, Mr. McCabe had again met with INSD, and in the second meeting he admitted that he authorized the disclosure. Mr. McCabe's description of the May 9, 2017 meeting contradicts the contemporaneous notes of the INSD agent and the recollections of both agents. Mr. McCabe described the May 9, 2017 encounter with INSD as his having been pulled aside by one of the agents outside of the presence of the others and asked about the article. In fact, one of the agents whom Mr. McCabe described as not present took the notes of the conversation, and his notes reflect not only that Mr. McCabe discussed the article and the conversation with the SDO, but also that he denied knowing its source. Mr. McCabe notes that just hours after INSD interviewed him, he learned that Mr. Comey had been removed as Director of the FBI. He has stated that the events that followed likely impaired his ability to recall the INSD interview in detail. In fact, in his discussion of the May 9, 2017 interview, Mr. McCabe frequently caveats his assertions by noting his lack of perfect recollection. However, because he had met with INSD a second time by that point, he must have known that the interviewing agents understood him to have denied that he authorized the disclosures in the October 30, 2016 article. His effort to minimize the significance of that portion of the meeting, which the agents described as lasting five to seven minutes, seems designed to persuade the OIG that the denial did not happen. Although a closer question, the preponderance of the evidence supports a finding that Mr. McCabe's testimony failing to acknowledge that he denied to INSD that he authorized the disclosure in the October 30, 2017 article was false, and that he lacked candor.

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B. Lack of Candor—Not Under Oath

1. Meeting with the Director on October 31, 2016

Ms. Will concluded that Mr. McCabe lacked candor when he told Mr. Comey on October 31, 2016, that he did not know how the information got into the October 30, 2016 WSJ article. As noted above, however, Mr. Comey's testimony regarding Mr. McCabe's affirmative denial of authorizing the disclosure in the article is equivocal and speculative. Although the preponderant evidence supports a finding that Mr. McCabe did not tell Mr. Comey that he authorized the disclosure, the testimony is insufficient to support a finding that Mr. McCabe denied being the source. Therefore, the first charge of lack of candor under oath is not supported by preponderant evidence.

2. May 9, 2017 INSD interview

Ms. Will found that Mr. McCabe denied authorizing the disclosure of the information in the WSJ article when INSD interviewed him on May 9, 2017. Mr. McCabe in his oral response stated, "I guess I did tell them I don't know." The contemporaneous notes of the interviewing agent along with INSD's contemporaneous preparation of a draft signed sworn statement reflecting Mr. McCabe's denial are strong evidence of the denial [redacted] At the August 18, 2017 interview, the interviewing agents told Mr. McCabe that they had spent considerable resources and time trying to find out the source of the information as a result of his earlier denial, and he did not suggest that their time had been wasted because he had previously told them he was the source. In other words, during the second interview, he did not claim to have earlier reported that he was the source.

b7A Per DOJ/OIG

Mr. McCabe points out that INSD's questioning of him about the WSJ article during the May 9, 2017 interview was unexpected and that may have been why he failed to acknowledge that he authorized the disclosure. However, the events surrounding the October 30, 2016 WSJ article were fresher in his mind at that point than they would have been in the November 29, 2017 OIG interview, yet he recounted the events during the November interview in considerable detail. The preponderance of the evidence supports a finding that Mr. McCabe lacked candor in his May 9, 2017 interview with INSD.

C. Unauthorized Disclosure

Ms. Will next concluded that Mr. McCabe's authorization to disclose the conversation with the SDO that also confirmed the existence of a previously unconfirmed investigation violated FBI Offense Code 4.10. Mr. McCabe contends that the FBI's Media Policy authorized him to make disclosure determinations. However, that policy also restricted the circumstances under which the FBI would disclose information about ongoing investigations. Although Mr. McCabe contends that the October 23, 2016 article suggesting that the FBI was acting politically deserved a response, and that it was in the public interest to refute that allegation, he chose to

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disclose a private conversation that involved a DOJ official not in the FBI, and in so doing confirmed the existence of an investigation. He acknowledged in his oral response that his "defense" of the FBI was at the expense of DOJ. The FBI is within the Department of Justice, and no rational analysis could conclude that it was in the public interest to defend the FBI at the expense of larger DOJ. At the very least, Mr. McCabe should have consulted with DOJ before unilaterally making the decision to disclose confidential information in the form of what appeared to be a leak. His failure to admit to the SDO that he (Mr. McCabe) had authorized the disclosure demonstrates his recognition that the disclosure was not in the overall best interest of the Department of Justice. Whether the disclosure was accurate or not, he should not have authorized the disclosure, and the preponderance of the evidence supports a finding that the disclosure was not authorized by FBI policy.

Penalty Determination

I have attached and incorporate Ms. Will's proposal and the Office of Professional Responsibility report that summarizes her Douglas factor analysis. I have also considered the FBI's disciplinary history. As Ms. Will notes, the standard penalty for lack of candor under oath is dismissal. The substantiated findings of lack of candor under oath are compounded by the finding of lack of candor not under oath, and the unauthorized disclosure finding. Although Mr. McCabe has had a distinguished career in the FBI, as Ms. Will observed, he was the second highest-ranking official in the FBI, and he is expected to handle himself with utmost integrity. For these reasons and having considered the Douglas factors, I recommend that you concur in her proposal that Mr. McCabe be dismissed from the FBI.

RECOMMENDATION: I recommend that you accept the proposal of Candice Will, Assistant Director, Office of Professional Responsibility, that Andrew G. McCabe be dismissed from the rolls of the FBI.

Decision

For the reasons stated in the foregoing recommendation, I have decided that Andrew G. McCabe should be removed from the Federal Bureau of Investigation and from the civil service.

March 16, 2018
Date

Jefferson B. Sessions III
Attorney General

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HEREIN IS UNCLASSIFIED
DATE 09-04-2018 BY [redacted] NSICG

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FD-340 (Rev. 4-11-03)

File Number 263D-HQ-[redacted]

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b7C -1

Field Office Acquiring Evidence FBIHQ / OPR

Serial # of Originating Document

Date Received February 23, 2018

From DOJ - OIG
(Name of Contributor/Interviewee)

(Address)

(City and State)

By DOJ - OIG

To Be Returned ☐ Yes ☒ No

Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)
Federal Rules of Criminal Procedure

☐ Yes ☒ No

Federal Taxpayer Information (FTI)

☐ Yes ☒ No

Title:

Reference:
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

2 disks and e-mail re: DOJ-OIG exhibits

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-04-2018 BY [redacted] NSICG

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b7C -1

[redacted] (DO) (FBI) b6 -1 b7C -1

From: Blier, William M.(OIG) <William.Blier@usdoj.gov>
Sent: Friday, February 23, 2018 11:14 AM
To: [redacted] (DO) (FBI); Will, Candice M. (DO) (FBI); [redacted] (DO) (FBI) b6 -1 b7C -1
Subject: RE: File Review
Attachments: Report Exhibit List - Disk 2.docx

Candice [redacted] b6 -1 b7C -1

To ensure that you have all materials that support our report when it is issued, in addition to the disk (and hard copies) we provided yesterday, we have produced a second disk containing the documents listed in the attached. I expect to have the disk shortly and can provide it to you immediately upon your being available to receive it. Let me know how you would like to proceed.

Thanks. Bill

From: Blier, William M.(OIG)
Sent: Thursday, February 22, 2018 3:07 PM
To: [redacted] (DO) (FBI); [redacted] Will, Candice M. (DO) (FBI); [redacted] b6 -1 b7C -1
Cc: [redacted] (DO) (FBI); [redacted]
Subject: RE: File Review

The password for the disk I provide is: [redacted] b7E -3

From: [redacted] (DO) (FBI) [mailto [redacted]
Sent: Thursday, February 22, 2018 1:26 PM
To: Blier, William M.(OIG) <wblier@OIG.USDOJ.GOV>; Will, Candice M. (DO) (FBI) [redacted] b6 -1 b7C -1
Cc [redacted] (DO) (FBI) [redacted]
Subject: RE: File Review

Bill,

Thank you very much. We should be able to get in with our credentials. We will see you shortly.

[redacted] b6 -1 b7C -1

[redacted]
Unit Chief
Office of Professional Responsibility b6 -1 b7C -1
Federal Bureau of Investigation
[redacted]

From: Blier, William M.(OIG) [mailto:William.Blier@usdoj.gov]
Sent: Thursday, February 22, 2018 1:21 PM b6 -1
To: Will, Candice M. (DO) (FBI [redacted] b7C -1