IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 06-26
	)	
CYRIL H. WECHT	)	**[UNDER SEAL]**

IN CAMERA
***EX PARTE* MOTION FOR RULING AS TO WHETHER POSSIBLE "IMPEACHMENT/CREDIBILITY" INFORMATION MUST BE DISCLOSED**

AND NOW comes the United States of America, by Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, First Assistant United States Attorney Robert S. Cessar, and Stephen S. Stallings, Assistant United States Attorney for said district, and hereby requests a ruling from the Court as to whether certain information concerning Bradley W. Orsini, Special Agent with the Federal Bureau of Investigation, falls within the dictates of *Brady* or *Giglio* and thus must be disclosed in the normal discovery process in the above-styled case. If the Court orders the information disclosed, the United States requests that this Court limit the use and availability of the information until further order of the Court.

Background of Special Agent Bradley W. Orsini

Special Agent Bradley W. Orsini has been a Special Agent with the Federal Bureau of Investigation (FBI) for over seventeen (17) years. From 1988 through late 1996, Special Agent Orsini worked violent crime cases in New Jersey, focusing on gang violence,

kidnapings, and other serious violent crimes. From 1997 through 2000, Special Agent Orsini handled public corruption investigations, and from 2000 through 2001 he worked narcotics cases. Immediately following the terrorist attacks of September 11, 2001, Special Agent Orsini was given command of a squad responsible for coordinating criminal cases arising in New Jersey from the attacks on the World Trade Center. From 2002 to the present, Special Agent Orsini again focused on public corruption cases, and has worked on several high-profile cases, including the investigation of former New Jersey Governor Jim McGreevey, for which he received a significant award.

During his years of service, he has received numerous commendations and awards, including:

- June, 2001, Award of Recognition related to the "Top-Ten Fugitive" case involving James Kopp.
- January 12, 2004, Certificate of Recognition from Piscataway, New Jersey authorities.
- October 24, 2005, Law Enforcement Agency Directors Award for Outstanding Performance in Law Enforcement.
- Three separate Quality Step Increases, among the highest monetary awards received by FBI agents, on April 16, 1993, April 28, 1996, and April 25, 1999.
- Eight separate FBI Director-Issued Monetary Incentive Awards issued on May 10, 1990, May 24, 1990, August 7, 1990, October

18, 1991, January 20, 1994, February 2, 1996, February 26, 1997, and August, 2005.

- Numerous letters of commendation from prosecutors, law enforcement agencies, and victims.

However, Special Agent Orsini has been disciplined on two occasions: November 2, 1998, and September 24, 2001.

1. The 1998 Disciplinary Action

In 1998, Special Agent Orsini was placed on a five day suspension for violation of an FBI policy related to the signing of other agent's names for convenience sake on certain FBI evidence reports. A complete copy of the November 2, 1998 letter to Special Agent Orsini explaining this disciplinary action is attached to this motion as Exhibit "A."

2. The 2001 Disciplinary Action

In 2001, Special Agent Orsini was demoted one level, placed on 30 day suspension and 12 month probation, and required to attend sensitivity training. This disciplinary action resulted from a series of findings reached after an investigation into allegations that Special Agent Orsini had been involved in a consensual relationship with another Special Agent. A complete copy of the September 24, 2001 letter to Special Agent Orsini advising him of the basis for this disciplinary action is attached as Exhibit "B." In sum, the September 24, 2001 letter cited Special Agent Orsini for (1) failing to follow established guidelines for the conduct of

a 1993 consent search; (2) failing to properly document ammunition seized during a 1993 search; (3) falsifying official documents by signing another agent's name to FBI 302 reports during the mid-1990s for convenience sake; (4) engaging in an improper (though consensual and non-harassing) relationship with another FBI Special Agent; (5) threatening a subordinate; (6) damaging government property; and (7) making insensitive remarks within the FBI squad area. The conduct cited in numbers 4-6 above all stem from a single series of episodes over a short period when Special Agent Orsini's relationship with the other FBI agent was revealed.

There are no other instances of disciplinary action reflected in Special Agent Orsini's FBI personnel records that negatively reflect on his character for truth and veracity, or otherwise. In fact, after the date of the 2001 discipline, Special Agent Orsini received numerous recognitions for outstanding performance as an FBI Special Agent, as set forth above, and served with distinction in the aftermath of the September 11, 2001 attacks.

Statement of Facts

In the case at bar, the defendant, Cyril H. Wecht, is charged with theft of honest services, wire fraud, mail fraud, and theft from a government entity receiving federal funding. Special Agent Orsini was one of the case agents involved in the investigation. The United States does not expect at this time to call Special Agent Orsini as a witness at trial. Special Agent Orsini was the

affiant on two search warrants that resulted in the seizure of evidence[1], but the evidence seized with those warrants will be introduced by other witnesses actually involved in the creation, chain of custody, and maintenance of that evidence.

The Materials Need Not Be Disclosed for Impeachment

Applicable case law recommends that prosecutors refer matters potentially falling under the auspices of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972), for judicial review when the matter may not be considered sufficiently clear. *See United States v. Dent*, 149 F.3d 180, 191 (3rd Cir. 1998). While the government does not believe the Special Agent Orsini matters to be disclosable, out of an abundence of caution the government requests a review by this Court. *See, United States v. Bocra*, 623 F.2fd 281, 285-86 (3d cir. 1980)(the submission of discovery materials to the court for an *in camera* inspection and decision as to which materials are discoverable is commonly used when the Government's need for preserving confidentiality over the materials must be balanced with the defendant's constitutional right to evidence material to his defense); *United States v. Boykin*, 986 F.2d 270, 276, n.2 (8th Cir. 1993)(stating, "it is common practice for the court to view *in*

[1] Potential *Brady/Giglio* material of a search warrant affiant need not be disclosed in a search warrant affidavit. *See Mays v. City of Dayton*, 134 F.3d 809, 816 (6th Cir.1998).

camera information which the prosecutor possess to determine whether it is *Brady* material that must be disclosed").

Special Agent Orsini's disciplinary history need only be disclosed if it contains specific instances of conduct probative to truthfulness, and then only if Special Agent Orsini were expected to be a government witness. Because Special Agent Orsini will not be a government witness, the inquiry ends there, and there need not be any disclosure. Generally, impeachment information relating to non-witnesses need not be disclosed to defendant. *United States v. Coggs*, 752 F. Supp. 848, 849 (N.D. Ill. 1990). *See also United States v. Green*, 178 F.3d 1099, 1109 (10th Cir. 1999)(where government did not call informant to testify, no error in not disclosing impeachment information as *Giglio* applies only to impeachment of a witness); *United States v. Mullins*, 22 F.3d 1365, 1372 (6th Cir. 1994) (no duty to disclose immunity agreement with person not called as witness). *United States v. Silva*, 71 F.3d 667, 670-71 (7th Cir. 1995)(where informant did not testify and none of his statements were introduced, informant's reliability therefore not in issue, and no error in government's failure to disclose his identity and unsavory background).

Even if Special Agent Orsini was expected to testify, however, the disciplinary history attached to this motion contains only two instances arguably involving veracity that could potentially be the subject of impeachment on cross-examination: (1) the November 2,

1998 suspension for signing another agent's name for convenience-sake on evidence packaging; and (2) the 1992 and 1993 conduct of "falsifying official documents" by affixing, again for convenience sake, the initials of another agent to FBI 302 reports, which formed part of the basis for his 2001 discipline. The other conduct for which he was disciplined in 2001 is not probative of his character for truthfulness and would not be subject to disclosure even if Special Agent Orsini testified. *United States v. Gonzalez*, 938 F.Supp. 1199, 1212-1213 (D.Del. 1996) (undisclosed allegations that FBI chemist engaged in unprofessional procedures, falsified information and made racist remarks not admissible or material when relevant only to information developed by defendant on cross-examination and inadmissible as impeachment of the limited direct examination)(copy attached to this motion).

For the Court's convenience, Exhibit "C" to this motion consists of a redacted version of the 1998 and 2001 reports setting forth only those two incidents. In the event the Court ultimately orders the disclosure of any material, the government respectfully submits that the redacted material constituting Exhibit "C" would be the only material subject to disclosure.

Conclusion

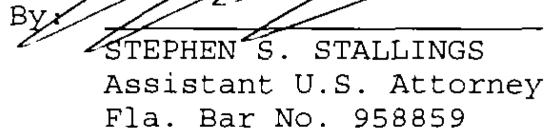
Based on the forgoing, the United States respectfully requests a ruling that none of the aforementioned information submitted *in camera* must be disclosed to the defense in this case as *Brady* or

Giglio material. If, however, the Court orders the information disclosed, the United States requests that the disclosure be ordered only in the event that Special Agent Orsini will be a witness at trial, and then only as to the redacted materials set forth in Exhibit "C". In addition, the United States requests that this Court accompany such order with a protective order. The United States suggests that due to the sensitive nature of the documents that are being disclosed and to protect the privacy of Special Agent Orsini, the Court order pursuant to Rule 16(d)(1), that the use of the information and any supporting documents by the defendant be restricted as follows:

- The attorney for the defendant may disclose the information only to his client and such disclosure may occur only after the attorney for the defendant advises the defendant of the prohibitions of the protective order;
- The attorney for the defendant is not to make any additional copies of discovery documents regarding this issue without prior authorization of the Court.
- The information and documents are for use only in this case and they are not to be disseminated or used for any other purpose.
- Any pleading referencing this information shall be filed under seal.

This request is made under seal in an effort to minimize the impact of the disclosure on Special Agent Orsini, personally and professionally, given the highly personal nature of the information. The government therefore requests that this motion and the courts' order be placed under seal until further order of this court.

MARY BETH BUCHANAN
United States Attorney



By: ______________________
STEPHEN S. STALLINGS
Assistant U.S. Attorney
Fla. Bar No. 958859

November 2, 1998

PERSONAL

Mr. Bradley W. Orsini
Federal Bureau of Investigation
Newark, New Jersey

Dear Mr. Orsini:

I have completed my review of the administrative inquiry regarding allegations that you violated Bureau policy when you signed another agent's name to evidence control forms without the agent having been present or having verified the valuable/drug evidence.

I have specifically relied upon your signed, sworn statement, dated September 3, 1998, wherein you stated:

> ". . . On a limited number of occasions, I along with my fellow agents, [name deleted] and [name deleted], would sign one another's name on the evidence packaging regarding the drugs purchased or money seized during this investigation. There was no other reason for doing this other than to save time. I categorically reject any notion that my signing for [name deleted] involved any impropriety with the evidence seized . . . "

By signing another agent's name to the evidence control forms, you violated the following Bureau policies:

The Manual of Administrative Operations and Procedures (MAOP) states in Part II, Section 2-4.4.8 (3) that:

1 - SAC, Newark, (Personal Attention) Enclosure **(See Note Pages 3-4)**

Enclosure given to SSA Orsini on 11/6/98 @ 10:00 A

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"(3) Valuable evidence is to be independently **counted/verified** by two officials. The sealing official is to be a federal criminal investigative agent or deputized officer; the witnessing official may include the ECT, the paralegal specialist, or other support employee directly involved in the process of seizing, packaging, and initial documentation of the evidence. **They are to verify the accuracy of the count and/or detect any errors before the evidence is sealed and placed in storage.**" (Emphasis added)

The MAOP, Part I, Section 1-1(9)(n), states:

"Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards . . ."

While I did not find that you possessed an intent to compromise either the evidence or the case, I did find that your conduct could have caused either personnel of the judicial system or defense attorneys representing the subjects of your Group II investigation to impugn the integrity of the Bureau and its evidence handling practices. While no prosecutorial damage to the Bureau or the Group II has occurred at this time, you are reminded that in the future you are expected to adhere to Bureau policies and you must at all times conduct yourself in a manner that is beyond reproach.

I have taken into consideration your lack of intent to commit wrongdoing, your positive work record, the comments of your Division Head, and the overall success of the Group II. However, none of the above mitigating factors excuse your actions.

To impress upon you the seriousness with which I view your signing of another agent's signature and your violation of Bureau evidence handling policy, I am hereby suspending you from duty for five calendar days without pay.

In the event that I have to address a similar matter with you in the future, I will not hesitate to impose a more severe sanction, up to and including dismissal.

APPEAL RIGHTS

Should you desire to appeal this action, you may address your written response stating the grounds on which you base your appeal to the Assistant Director (AD), Inspection Division (INSD), Room 7825, Federal Bureau of Investigation, J. Edgar Hoover Building, 935 Pennsylvania Avenue, Northwest, Washington, D.C. 20535-0001. Any appeal must be filed within thirty (30) calendar days following notification of the disciplinary action. Upon receipt of

an appeal of a suspension of 14 days or less or a probation action, the AD or Deputy AD, INSD, will personally review and decide the appeal. Upon receipt of an appeal of a suspension more than 14 days, dismissal, or demotion, the AD, INSD, will establish a Disciplinary Review Board to review the action taken by the OPR. You are referred to the Director's Memorandum to all SACs dated March 5, 1997, for additional details pertaining to appeals.

Sincerely Yours

C. Frank Figliuzzi, Chief
Adjudication Unit II
Office of Professional
Responsibility

NOTE: The enclosed letter should be personally delivered to employee, at which time it should be ensured that the employee fully understands the reasons for the Bureau's action.

Suspensions: The following procedures must be applied in effecting suspensions:

You must (1) determine the effective dates of the suspension, and notify the employee of those dates, within seven calendar days of presentation of the letter to the employee; **and** (2) make the effective dates of the suspension no later than 21 calendar days from the date of presentation of the letter to the employee. If you are unable to satisfy **either** criteria, please contact the Unit Chief, Adjudication Unit II (AU II) x-5417, for approval of an alternate plan. Generally, delays should be based primarily upon operational considerations; however, personal constraints can be considered in extraordinary circumstances.

All suspensions **must** commence at the close of business on a Friday. Extraordinary circumstances may dictate the beginning of a suspension on another day due to varied work schedules. In those cases, contact the AU for guidance.

Suspensions **must** be calculated in **calendar days** (seven calendar days = five workdays), and may be imposed over holidays. (Refer to the Manual of Administrative Operations and Procedures, Part I, Section 13-12 (2) for further clarification.)

Mr. Bradley W. Orsini

Example: A suspension from close of business 11/8/98 through close of business 11/13/98 is equal to five calendar days. The employee's return to duty date would be 11/14/98.

Once you are sure of the date the suspension is to be effected, you should **immediately** enter the SF-52 into the Bureau's Personnel Management System (BPMS). Upon the employee's return to duty, you should immediately enter into the BPMS the SF-52 for the employee's return. If you are unable to enter the employee's return to duty SF-52, you **must** contact the Pay Administration and Support Staffing Unit, x-4170 for guidance.

ADMINISTRATIVE: Bureau property in the custody of this employee should be secured and retained until employee returns to duty. Furnish employee with a copy of Standard Form 8, Notice to Federal Employee about Unemployment Compensation, before employee ceases duty.

September 24, 2001

PERSONAL

Mr. Bradley W. Orsini
Federal Bureau of Investigation
Newark, New Jersey

Dear Mr. Orsini:

I have thoroughly reviewed all documentation pertaining to the charges against you which served as the basis for your proposed demotion from a GS -14 Supervisory Special Agent (SSA) to a GS -13 Special Agent (SA), suspension for 45 calendar days, without pay, probation for twelve months, and referral to the Office of Equal Employment Opportunity Affairs (OEEOA) for mandatory sensitivity training. Each of these charges was fully defined to you in the Office of Professional Responsibility (OPR) letter dated April 10, 2001.

As the deciding official in this matter, I have given full and impartial consideration to all documentation and evidence upon which the proposed actions were based, the information provided within the written response submitted by your attorney dated August 3, 2001, and the telephonic presentation comments offered by your attorney and you on August 13, 2001. I find, based upon a preponderance of evidence, that the allegations that you failed to follow established guidelines for the conduct of consent searches during the seizure of a citizen's weapon on November 2, 1993, and failed to properly document ammunition seized during the search; falsified official documents; engaged in an improper personal relationship with a subordinate; threatened the physical assault of a subordinate; damaged government property; and made unprofessional and insensitive remarks on numerous occasions concerning sexual orientation, and played a tape recording, which contained vulgar sexual content, within the squad area while squad members were present on an undefined number of occasions, have been substantiated. However, I have determined that mitigating factors exist which warrant reducing the originally proposed 45 calendar days

1 - SAC, Newark (Personal Attention) Enclosure (See NOTE on Page 29)

SAC

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suspension, without pay, to 30 calendar days, without pay. Therefore, I am demoting you to a GS -13 SA position, suspending you for 30 calendar days, without pay, placing you on twelve months probation and referring your case to the OEEOA so that you can be afforded mandatory sensitivity training at the earliest opportunity.

IMPROPER DOCUMENTATION AND FAILURE TO FOLLOW CONSENT SEARCH PROCEDURES

On November 2, 1993, you and another Special Agent (hereafter referenced as SA #2) proceeded to a business facility where your source indicated that illegal firearms might be kept. The individuals who co-owned the business were identified by your source as twin brothers. During a consent search of that business facility, under authorization by one of the brothers (hereafter referenced as brother #1), two weapons were located and ultimately seized. While you and SA #2 were still at the business facility, an FD-26, "Consent to Search," form was executed by brother #1. The FD-26 was found to reflect not only the address of the business facility but also the address of the twin brother's (hereafter referenced as brother #2) private residence. You and SA #2 proceeded to the residence of brother #2 where he admitted you both and indicated the location of a highly specialized rifle beneath his bed. You and SA #2 examined the weapon and seized it.

In his signed, sworn statement dated November 5, 1998, SA #2 reported that he did not "recall why we did not obtain written consent from [brother #2] for that search." He also stated that he had no explanation why you and he would have asked brother #1 for consent to search the residence of brother #2, "other than that we made a mistake." SA #2 noted that the brothers were twins and that this factor "may have caused some confusion." In addition, SA #2 stated that he assumed you both relied "strictly on oral consent from [brother #2] to permit the search of his residence." Lastly, SA #2 confirmed that his review of the interview forms from November 2, 1993, revealed "no reference to [brother #2] orally consenting to a search of his premises at...."

A thorough review of your signed, sworn statement dated January 21, 1999, revealed that while you and SA #2 were at the business facility, an FD-26 Consent to Search form was presented and that brother #1 provided that consent.

The FD-26 Consent to Search form indicated that brother #1 authorized the search of brother #2's residence while brother #2's signatory approval on that or any separate FD-26 form was never obtained. Brother #1's signatory approval on the FD-26 Consent to Search form at issue was valid authorization for conducting a search of the business facility because he was co-owner of that facility. However, brother #1's signatory approval to also search brother #2's private residence did not constitute valid

authorization. Rather, consent to search brother #2's residence could only have been appropriately authorized by brother #2 and it was your shared responsibility to ensure that such clear authorization was obtained.

Your attorney's responses to this issue are noteworthy. Specifically, your attorney claimed that the "allegation of failure to properly document consent to search cannot be sustained because SSA Orsini did obtain a written consent to search from an individual to conduct the search." Secondly, your attorney claimed that there is an "initial failure of proof on this charge" and that the Bureau "is only speculating that brother #1 did not have [apparent] authority to give consent" for the search and seizure which occurred at brother #2's apartment on November 2, 1993.

Conversely, your attorney also claimed that if the alternative is assumed that brother #1 did not have apparent authority, Bureau policy was not violated because the Legal Handbook for Special Agents "does not impose an absolute standard upon investigators in obtaining consents to search, but rather only requires that Special Agents make a good faith effort to ascertain who had actual control of the property to be searched." Your attorney claimed that you "reasonably made a mistaken but good faith error that brother #1 had authority to consent because [you] were confused by the brothers being twins." He noted that you learned of brother #2's rifle, while still at the business facility with both brothers, and that you "amended the FD-26 to authorize the search of brother #2's residence" in their presence. Therefore, your attorney concluded that because you did not act intentionally or in bad faith when you amended the FD-26 form, the charge can not be sustained.

I disagree with your attorney's assertion that the governing regulations within the Legal Handbook for Special Agents, Section 5-4.2, captioned "Lawful Possession," fail to "impose an absolute standard" in consent searches. A careful reading of the full citation reveals concise directives for SAs seeking permission to search, without the issuance of a warrant. Specifically, the regulation instructs that the SAs "must obtain consent from a person authorized to give it" and cautions that, "Only a person in lawful possession may give consent." The regulation further defines such a person as one "who currently possesses the premises or personal property." Further, SAs are clearly instructed that they "should make certain that consent is obtained from one in authority," and that "doubts as to who possesses the premises or other property should be resolved before proceeding." Lastly, the SAs are instructed to carefully question any person present who might be of help in deciding who is authorized to consent." (Emphasis added).

Based upon the evidence, only one of the twin brothers was physically present with you and SA #2 at the apartment where the specialized weapon was examined and ultimately seized on November 2, 1993. While initial confusion may have existed when the twin brothers were both present with you and SA #2 at their mutually owned

business establishment, ample opportunity existed to clarify brother #2's identity and establish his lawful possession of the apartment, once you and SA #2 were alone with him at the apartment subsequently. Nothing within the evidence revealed that such questioning occurred. Further, given brother #2's cooperativeness, the evidence reveals no excuse for your failure to comply with the express direction of Section 5-4.6 of the Legal Handbook, which clearly dictates that consent be obtained in writing, if possible. Third, precisely because the brothers were virtually identical in appearance, extreme care was required from both you and SA #2 to ensure the accuracy of the FD-26 at issue and strict adherence to the instructions on Lawful Possession discussed above. Thus, given the failures cited herein, I do not concur that you exerted a good faith effort in this matter. The Legal Handbook explanation of what is required in these circumstances is clear and was clearly not complied with here.

Lastly, your failure to secure proper proof of consent must also be considered in the context of evidence which indicated that Squad C-13 members questioned the purpose and legal rationale for conducting gun sweeps such as the one executed by you and SA #2 on November 2, 1993. Simply because the propriety of those types of seizures was an extremely controversial subject within the squad, an SA of your experience should have ensured that the legality of your actions concerning any such seizures could withstand intense scrutiny and thus required vigilance in both their documentation and conduct. Therefore, I find that the evidence substantiated that you failed to obtain proper authorization, in the form of a correctly signed FD-26 form, prior to conducting a consent search for and seizing a weapon from brother #2's residence on November 2, 1993, and, by so doing, violated the following well-established regulations.

The Legal Handbook for Special Agents, Section 5-4.2, captioned "Lawful Possession," revealed the following information:

> "Agents seeking permission to search without a warrant must obtain consent from a person authorized to give it. Only a person in lawful possession may give consent. He/she is the person who currently possesses the premises or personal property....Agents should make certain that consent is obtained from one in authority. Any doubts as to who possesses the premises or other property should be resolved before proceeding. Agents should carefully question any person present who might be of help in deciding who is authorized to consent. The Supreme Court has held that a valid consent may be obtained from one with "apparent" authority over the property. This assumes that the Agents have made a good faith effort to ascertain who has actual control, and are therefore reasonable in believing that the person from whom consent was obtained had such control."

Mr. Bradley W. Orsini

Further, Section 5-4.6, captioned, "Proof of Consent," states, in pertinent part:

> "Consent to search should be obtained in writing, if possible. Form FD-26 is to be used for this purpose..."

Secondly, the evidence revealed that you failed to document the seizure of ammunition from brother #2's residence on November 2, 1993, when you executed an FD-597, "Receipt for Property Received/Returned/Released/Seized" form. You stated in your signed, sworn statement dated January 21, 1999, that you could not provide an explanation as to why the number of rounds seized were not specified nor could you recall the number seized or if the rounds were counted at brother #2's apartment or at any later time. I noted that in other seizures conducted by you and SA #2 in the case file, seized ammunition, to include even BB ammunition and CO2 cartridges, were meticulously listed. The difference between the November 2, 1993 seizure and the other seizures wherein ammunition was so comprehensively listed is considered significant because the November 2, 1993 seizure ultimately resulted in an accidental discharge within the Newark Office of the weapon seized from brother #2's residence. The shell casing and projectile from that incident were never accounted for nor recovered. Lastly, the potential evidentiary significance of the ammunition seized from brother #2's residence is obvious and your failure to ensure the proper documentation of that ammunition on the FD-597 form dated November 2, 1993, placed that evidentiary value in jeopardy.

I note that neither your attorney nor you disputed the evidence in this matter within the response material. Therefore, I find that you violated the following well-established policy by failing to accurately document the seizure of ammunition on the FD-597 at issue.

The Legal Handbook for FBI Agents, Section 5-2.2.11, captioned "Leaving Warrant and Receipt," states, in pertinent part:

> "...In addition, a receipt is to be given for any money, documents, or other property seized, whether under authority of the warrant or otherwise....The receipt is to be in the form of an itemized list of all property taken. Agents should ensure that the description of all items is adequate and accurate."

The Manual of Administrative Operations and Procedures, (MAOP), Part II, Section 2-4.4.1 (1) and (2), captioned "Evidence," states, in pertinent part:

(1) "...Form FD-597 (Receipt for Property Received/Returned/Released/Seized) is to be used to document the receipt/return of property acquired during investigations."

(2) "It is essential that seized/recovered/contributed property be properly identified and described by investigative personnel at the time possession is transferred to the investigator."

FALSIFICATION OF OFFICIAL DOCUMENTS

This allegation addresses various FD-302 forms executed during 1993 and 1994.

In his signed, sworn statement dated November 5, 1998, SA #2 stated, "SA Orsini and I never had an agreement or understanding between us about signing each other's initials on Bureau documents in this case. It is the responsibility of an FBI SA to sign his or her own initials next to his or her own name, as appropriate, on Bureau documents, including FD-302s. I do not recall authorizing anyone to sign my initials on a Bureau document in this case..."

SA #2 confirmed his review of the following documents: two original FD-302's each dated October 8, 1993; an original FD-302 dated October 13, 1993; an original FD-302 dated June 16, 1994; an original FD-302 dated February 3, 1994; and, an original FD-302 dated February 1, 1994. The SA stated, "I did not write my initials on any of these documents which, as noted above, are original FD-302s. I do not know how my initials appeared on these documents." He concluded by stating, "I have no knowledge of anyone falsifying anything in this case file other than the FD-302s on which my initials were written by someone else. I am not aware of anyone altering, changing, or replacing anything in this file."

In your signed, sworn statement dated January 21, 1999, you stated your understanding that FBI policy requires all individuals who conduct investigations, reported in the form of an FD-302, to read, review and initial next to their names on the bottom of the form, reflecting their review and agreement with the FD-302's content, before submitting it to file. You stated, "It is my understanding that the purpose of the policy is to verify the accuracy of the content of the FD-302 before it is placed into the file."

When asked for an explanation of your understanding of the potential impact of an FD-302 with falsified initials being entered into evidence or produced to the defense through the discovery process, you stated, "My response is that it could be a potential problem. If an SA were to take the witness stand and testify that the initials on the FD-302 had not been written by himself/herself or testify that the SA disagreed with the

content of the FD-302, there would be a problem. I do not perceive it as a problem if the information in the body of the FD-302 is accurate but the initials are written by another agent. I do not know what the ramifications could be on a case if such a circumstance were to occur. I guess it would be a violation of Bureau policy for someone other than the SA on the 'investigation by' line of an FD-302 to write that SA's initials next to his/her name."

You also stated:

> "I have affixed the initials of another SA to an FD-302 on the 'investigation by' line. I have no idea how many times I may have done so. I have no way of quantifying the number of times I may have done so. I cannot recall the circumstances under which I may have affixed the initial of other SAs to FD-302s. It is likely that I would have done it if the squad rotor had come to me and said she needed to put an FD-302 into the file and it needed to be initialed. Under those circumstances, I would have written my initials and/or the initials of the other SAs involved in the reported investigation on the FD-302. Other than the rotor bringing FD-302s to me, I cannot think of any other circumstance which would have necessitated my affixing the initials of another SA to an FD-302."

When you were asked why the other SAs would be unable to affix their own initials, you responded by stating that they may not have been available. You stated, "I wrote their initials because it was a convenience and a shortcut." You added that there were "probably hundreds" of FD-302s prepared by other SAs which went through the rotor's desk and that it was probable not all of them had the preparing SAs' initials on them when sent to the rotor for filing. You did not recall how the idea of affixing other SAs' initials to the FD-302s arose.

Relative to SA #2, you stated, "There was no specific meeting between us in which we agreed that I would write his initials on FD-302s reflecting investigations he had conducted or in which he had participated. However, [SA #2] and I had an implied understanding that we could affix initials on FD-302s for one another."

When you were asked on how many occasions you affixed the initials of another SA to an FD-302, you responded that you did "not believe there were any SAs other than [SA #2] for whom I would have affixed their initials to an FD-302. There probably were no other such SAs." You did not recall any discussions or conversations with other SAs during which they specifically discussed your writing their initials on an FD-302. When questioned if there were ever any occasions when you affixed the initials of another SA to a Bureau document without obtaining that SA's authorization, you responded, "no, not really."

Mr. Bradley W. Orsini

You were asked if you ever authorized another SA to affix your initials to an FD-302 or other documents in the [subject's name withheld] case and responded that you did not believe you expressly did so. However, you reiterated that you "impliedly gave [SA #2] permission to do so." You stated, "I do not know of anyone else ever writing my initials on a document in the [subject's name withheld] case, other than [SA #2]." You indicated that you were questioned if you ever authorized another SA to affix your initials or signature to any Bureau documents beyond those that the Bureau was already aware of. You responded that you did not believe so but that it was "possible." You could not "think of any circumstances when [you] would have done so" and stated that "it would not be a common practice for me to engage in such activity."

Lastly, you stated:

> "[SA #2] and I had an implied understanding that we could initial each other's FD-302s. I believe that other SAs on C-13 had the same understanding about writing each other's initials on FD-302s. I believe that none of the other SAs on C-13 would be surprised to learn that I had written their initials on FD-302s. The other SAs on the squad might deny to OPR that there was such an implied understanding among us, but there was. My only reason for writing other SAs' initials on documents was that it was expedient and it served as an administrative shortcut."
>
> "It is likely that I have written the initials of other SAs on documents in other Bureau files. However, I cannot begin to recall how many times I may have done so or in which files."

In response to this charge, your attorney acknowledged that you accept responsibility in this matter but offered several factors which, according to your attorney, "substantially mitigate the significance of this charge." Specifically, your attorney claimed: 1) that you have "already been punished for substantially the same conduct...in November 1998, for placing other Agent's initials on chain of custody documents between 1994 and 1996," and that you have not engaged in similar misconduct since the November 1998 sanction; 2) that you did not enter inaccurate or false information on the FD-302s at issue nor intend to compromise the integrity of any investigation; 3) that the FD-302's at issue were "administrative file copies," which you initialed for purposes of "administrative expediency and convenience," and which you believed would not be used in litigation; and, 4) that this charge is "quite stale" and, given the prior investigation concerning you, the Bureau "reasonably should have been aware of it much earlier than seven to eight years after the fact."

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It is a matter of official record that you were suspended from duty for five calendar days, without pay, in November 1998, on the substantiated charges that you falsified chain of custody forms and evidence labels between May 1995 and January 1997. Further, the falsified FD-302s which could be identified in the current inquiry occurred during 1993 and 1994, or prior to the falsifications for which you were sanctioned in November 1998. I disagree with the premise that because you were sanctioned for falsifying one type of official document between 1995 and 1997, you are immune from punishment for subsequently discovered misconduct in falsifying a different type of document in 1993 and 1994. However, the age of the offense, your prior punishment and the absence of any indication that you continued this conduct after 1997 have been taken into account in determining that the appropriate period of suspension should be 30 calendar days rather than the proposed 45 calendar days.

As denoted in the proposal letter dated April 10, 2001, the current charges are of extreme significance and can not be reconciled with the fundamental principles of integrity required of all Bureau employees. Your signed, sworn statement's admission that, in addition to those FD-302s which could be identified during the inquiry as falsified between 1993 and 1994, you had "no idea how many times" you had falsified other FD-302s, remains of grave concern. You are advised that this charge, by itself, carried the potential for your dismissal from the rolls of the FBI under the provisions of the former Director's policy Airtel dated May 3, 1993.

Relative to the second and third issues cited above, I note that you asserted during the inquiry that you did not change the contents of the FD-302s at issue but merely affixed the initials of other SA(s) to FD-302s as "a convenience and shortcut." Thus, your attorney's paraphrasing of your initial assertions by claiming that you acted solely for "administrative expediency and convenience," offered no new element of mitigation to this matter. Secondly, your attorney's description of the falsified FD-302s identified during the inquiry as "administrative file copies" is considered intentionally misleading. As acknowledged within your signed, sworn statement, all of the FD-302s reviewed by you during the inquiry were original documents and not mere duplicates, as inferred by use of the words "administrative file copies." Lastly, as you are aware, an SA's initials are only applied to original FD-302's and therefore, a true administrative file copy would not be initialed.

The fourth issue cited by your attorney bears exploration. As you are fully aware, the current inquiry consists of four separate investigations, initiated between August 1997 and May 2000, which were consolidated during the adjudication process. Specifically, and in sum, the first inquiry was initiated on August 29, 1997, and was subsequently enhanced on November 9, 1998, to address, in part, the falsified documents at issue between 1993 and 1994. You provided a signed, sworn statement in that matter on January 21, 1999, or approximately two months after the allegation first arose. Nevertheless, it is obvious that while the investigation was undertaken

quickly, the issuance of a disciplinary sanction relative to the consequence of those admitted falsifications was delayed, in large part, by the OPR's continued receipt of subsequent misconduct allegations against you. Those subsequent allegations were initiated on January 1, 2000, and enhanced on May 19, 2000. As clearly shown by the volume of the redacted investigative file made available to both you and your attorney, each OPR investigation conducted was extensive as was the corresponding adjudication process concerning them. Thus, I reject your attorney's attempt to dilute the significance of the falsification charge on the incorrect premise that your misconduct in that matter was undetected for an approximate seven to eight years after it occurred.

Therefore, I find that you repeatedly and intentionally falsified official Bureau documents in the form of numerous FD-302's through the initialing of other SA's names. However, the full extent of such falsifications and the impact on the validity of the documents so falsified remains unknown and is considered a significant aggravating factor in this matter. Your actions violated the following, well-established regulations.

The MAOP, Part I, Section 1-1, states, in pertinent part:

> "...employees shall conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them."

The MAOP, Part I, Section 1-2, states, in pertinent part:

> "Employees...must not, at any time, engage in...dishonest...conduct."

The MAOP, Part II, Section 3 -13, states, in pertinent part:

> "(2) Agents are expected to be familiar with the Federal Rules of Evidence, the basic doctrines of which should be considered in all investigations, whether criminal or civil. Likewise, these Rules must be considered in preparation of both investigative and prosecutive summary reports."
>
> "(3) All reasonable precautions must be taken to ensure that evidence by Agents is admissible."

Lastly, the former Director's Airtel dated May 3, 1993, clearly articulated to all employees that instances of misconduct related to lack of candor, falsification of official records, fraud, and other similar offenses, could not be reconciled with the fundamental

principles of integrity to which FBI employees must adhere. At the time, the Director advised:

> "Consequently, all employees are hereby placed on notice that derelictions in their responsibility to maintain the FBI's high standards of conduct will be regarded even more stringently in the future. Henceforth, an employee failing to uphold such values as reliability, trustworthiness, and integrity, can expect to meet with increased levels of discipline, to include the employee's possible dismissal from the rolls of the FBI."

IMPROPER PERSONAL RELATIONSHIP WITH A SUBORDINATE

My review of the signed, sworn statements obtained during the inquiry revealed that the existence of a personal relationship between you and a female subordinate SA [withheld - hereafter referenced as SA #5], was widely rumored within the Newark Office and that numerous employees believed that it resulted in favoritism. You and the female SA under your supervision agree that the relationship began in approximately April, 1998 and was ongoing at the time of the OPR inquiry. Both of you deny that the relationship resulted in any favoritism.

Nevertheless, the evidence substantiated that this was not the perception of your subordinates. The clearest demonstrations of this perception are the "gag gifts" given to the female SA at the squad's Christmas parties in 1998 and 1999. It is undisputed that in 1998, the female SA with whom you had a personal relationship received a pet collar, with a note which she described as reading, "If found, return to Brad Orsini." The clear import of this public gift would seem to be that she was your pet, or favored person. Despite this obvious and public indication that subordinates believed that the female SA was receiving favorable treatment, you did not take action to remove yourself from her direct supervision.

At the squad Christmas party in 1999, it is undisputed that another public gift was exchanged. According to the female SA, this was a toy wheel with a guide for distributing the best cases, informants, etc., which when spun always turned to her picture. The file is replete with the opinions of individual employees that particular acts on your part constituted favoritism, including allowing the female SA to escape unfavorable assignments. You offer explanations for each decision made by you relative to the female SA as to car, cases, assignments and informants on their merits. Therefore, while the perception obviously existed among members of your former squad, I find that the evidence does not substantiate an actual finding of favoritism in this matter.

However, you claimed that you were unaware of the appearance and perception of favoritism and morale problems created by your personal relationship with a female subordinate. By their very nature, the public notoriety attached to the "gag gifts" would have put even the most insensitive person on notice of this perception. Moreover, several other factors appear to establish your knowledge of the improper nature of your relationship. In your signed, sworn statement you were asked if you thought your relationship was appropriate. You declined to reach a conclusion on that issue, but stated that you "...did recognize at the time that supervisor/subordinate, romantic/sexual relationships are not proper." You explained further that you did not commit any favorable acts toward the female subordinate and cannot say how other people perceived things.

There appears to be no logical way to reconcile this last statement with the notoriety attached to the public exchange of the gag gifts at the Squad C-8 Christmas parties in 1998 and 1999. Moreover, a fellow Newark Office SSA stated that he cautioned you once to the effect, "I hope nothing is going on between you (and the female SA). Don't do it buddy. I am telling you." On another occasion in the break room this SSA stated that his response to a comment by you was that, "At least I am not having a relationship with someone on my squad," which was a clear suggestion that your relationship was incompatible with your supervisory status and responsibilities. Finally, I noted that it was not until you were confronted by an ASAC, that you acknowledged your intimate relationship with the subordinate female SA, and that it had been ongoing for approximately one and one-half years. You were subsequently removed from your supervisory responsibility for the C-8 squad and transferred to another squad. in January 2000.

Your attorney responded to this charge by confirming that you admitted to and accepted responsibility for your inappropriate relationship with the female SA. However, your attorney asserted that substantial mitigating factors also exist relative to this issue. Specifically, he claimed that the "undisputed evidence shows that, at least in the Newark Division, the mere existence of [a] supervisor-subordinate relationship was not considered <u>per se</u> improper by management." Secondly, your attorney indicated that you and the female SA, "took care" that your interactions in the workplace were kept "strictly professional" and that several witnesses attested to your success in those endeavors. Further, your attorney claimed that the evidence did not show a "wide spread perception" of preferential treatment by you towards the female SA. He stated that the perception of unfair treatment "among a few Squad members" arose after a male SA expressed resentment over a wiretap assignment to him in the Fall of 1999. Lastly, your attorney asserted that "the undisputed evidence from the investigation shows that the morale of the Squad C-8, did not begin to suffer until the last few days of [your] supervision of it or even until after [you] were reassigned."

The investigative record disputes each of your attorney's assertions. However, your attorney's claim that mitigation exists in this matter because the "undisputed evidence shows that, at least in the Newark Division, the mere existence of [a] supervisor-subordinate relationship was not considered per se improper by management," warrants exploration. Obvious in such a claim is the attempt to define a prevailing atmosphere of acceptance, or tacit approval, of supervisor-subordinate relationships throughout the Newark Office and, specifically, within the ranks of upper management. The evidence contradicts the validity of such an assertion in two specific ways. First, both the ASAC and SAC provided signed, sworn statements wherein each denied any knowledge that you and the female SA were romantically involved until the issue was brought to the ASAC's attention on December 30, 1999. You confirmed the accuracy of those denials during your telephonic hearing comments on August 13, 2001, captured below. Both you and the female SA agreed that your romantic relationship began during April 1998, or approximately a year and one-half before the relationship was brought to the attention of the ASAC and, subsequently the Acting SAC. Thus, to equate their lack of knowledge about the relationship as approval of it, tacit or otherwise, defies logic.

Secondly, the ASAC's reaction on December 30, 1999, upon learning of the possibility that you were involved in a romantic relationship with a subordinate, were memorialized in his EC dated January 11, 2000. The contents of the ASAC's EC, as revealed by the following excerpts from it, speak to the degree of concern caused by that relationship, once known, and disputes any assertions that acceptance of such relationships existed. In pertinent part, the EC contained the following comments by the ASAC:

> "Within a half hour of the receipt of this allegation, I contacted [name withheld], the FBI's Chief EEO Officer [at FBIHQ]...I told her that I believed the SSA in this matter should be confronted and that if the matter were in any way confirmed, the SSA and the subordinate needed to be separated. Furthermore, the SSA, as opposed to the subordinate, needed to be transferred in that, as the SSA, he was more culpable or responsible than the subordinate... "
>
> "After consulting with [the EEO Officer], I confronted SSA Orsini in my office. I asked if he was sleeping with someone on the squad. SSA Orsini...acknowledged that he had a 'special relationship' with [the female SA]. SSA Orsini declined to provide any further details regarding this relationship,...I advised him that it was poor judgement on his part to allow a 'special relationship' with a subordinate to evolve and that I would

> recommend that some transfer [sic] so that he was no longer her rating official. SSA Orsini indicated that he had considered bringing the relationship to my attention as he and [the female SA] had weighed the impact of the relationship on the squad."

Lastly, the EC noted that the ASAC and the Acting SAC discussed the relationship and decided that you and the female SA should be separated through your transfer from the squad. The EC concluded with the following statement: "SSA Orsini was transferred to Squad C-14 from Squad C-8 effective January 7, 2000."

It is indisputable from the above material, that your supervisor-subordinate relationship was immediately addressed by a management official once he was advised of it on December 30, 1999, and was resolved by your removal as SSA of Squad C-8, on January 7, 2000, or less than two weeks later. Such actions are hardly indicative that your supervisor-subordinate relationship, or any such relationships, were accepted conduct within the Newark Office.

During the telephonic presentation on August 13, 2001, you personally commented concerning this charge. You stated that you were removed immediately from a squad you loved and were asked by a former SAC to build. You indicated that the gag gifts given at the Christmas party of 1999 brought "all of this to light" and that the disruption of the squad started at that point. You expressed remorse that because of the disruption to the Squad caused by that relationship, you felt that you had personally let your management officials down after they had placed confidence in you. You stated that you recognized that this situation should have been handled differently and that you should have discussed the relationship with the ASAC before he learned of it from someone else. However, due to various situations in your life, you were not prepared to do so. You stated that, in hindsight, your failure to personally discuss the relationship with the ASAC and to resolve how the squad would be handled, was one of your greatest regrets. You emphasized that you did not perceive that squad members were aware of your intimate relationship with the female SA until the Christmas party of 1999, and asserted that you would have addressed the issue beforehand if you had known. You described that perception failure as a "mistake."

Your comments appear to accept responsibility; however, they simultaneously reveal that you have not acknowledged, even after review of the extensive redacted evidence in this matter, that several significant indicators of squad disruption existed well before the events of the Christmas party in 1999. Further, the evidence clearly reveals that you were aware, at the time, that "supervisor/subordinate, romantic/sexual relationships are not proper." Yet, you continued that relationship for a period of approximately one and one half years and only acknowledged it, reluctantly, once confronted by the ASAC on December 30, 1999. Thus, I find that you engaged in an

improper relationship with a subordinate female SA while serving as an SSA on Squad C-8 and that no mitigating factors of value were offered by your attorney or yourself in this matter. Your actions violated that following regulations:

The FBI Employee Handbook, page 27, under the heading "Rights and Responsibilities," states, in pertinent part:

> "The FBI, therefore, expects and requires that high standards of personal conduct on the part of its employees be maintained not only when they are engaged in their official duties but while off duty. Employees should avoid any activity or situation which could be misinterpreted or misunderstood to the detriment of the FBI. In other words, conduct must not always be proper but always appear proper. The requirements are a condition of employment and should be clearly understood at the outset."

Further, the FBI Handbook indicates the following applicable items under the heading "Standards Of Ethical Conduct, Government Ethics," on pages 38 and 39:

> "Employees should endeavor to avoid any actions creating the appearance they are violating...ethical standards promulgated pursuant to Executive Order 12674."

THREATENED PHYSICAL ASSAULT OF SUBORDINATE

In his signed, sworn statement dated February 29, 2000, SA #8 stated, "On New Year's Eve, 1999, I received a phone call from SSA Orsini. SSA Orsini advised me that [ASAC #1] had confronted him and [SA #5] about having a personal relationship....Throughout the conversation, SSA Orsini kept mentioning that someone told the front office. He repeatedly framed questions to me in the form of assertions, that I was the one that had gone to the front office." Continuing, SA #8 stated, "The following Monday, January 3, 2000, SSA Orsini called a squad meeting....he met with each of the squad members individually....He called me into his office and shut the door. At this point, I was still disturbed that he had accused me of talking to the front office. So, I told him that I wanted to know what he wanted to discuss and whom he was reporting to. I told him, that if this involved the same issues he had talked with me about on Friday, that I wanted a witness present or that we could go up to the front office and discuss the matter with whomever he was reporting to. SSA Orsini appeared agitated and disturbed at the outset, but his demeanor worsened after I said this to him. He stated that this was a critical time for him and that his career was on the line....At some point during this conversation, SSA Orsini pulled a chair up and got within inches of my face. In turn, he told me words to the affect, ' [first name withheld], I'm gonna

have to hit you.' He then hesitated, backed away and said 'I'm only kidding.' SSA Orsini paced back and forth angrily during this meeting. As he was leaving, he told me 'he reserved the right to discuss the matter with me later, one on one.'" SA #8 also stated, "...However, on January 6, 2000, he called me and [withheld - hereafter referenced as SSA #2] into his office to apologize. SSA Orsini told us that a couple of times during his meeting with [the Acting SAC] and [ASAC #1] that [the Acting SAC] had to step in between the two of them."

My review of the signed, sworn statements provided during the inquiry revealed three SAs who had been told by SA #8 of the alleged New Year Eve's telephone conversation between himself and you and one additional SA with whom SA #8 discussed the January 3, 2000 meeting. However, none of these SAs revealed direct, personal knowledge concerning the January 3, 2000, meeting. Their statements have been considered only in corroboration of SA #8's signed, sworn statement.

In his signed, sworn statement dated April 20, 2000, ASAC #1 stated, "I was informed that SSA Orsini had conducted...individual interviews of members of his squad. I thought this was in poor judgment and intimidating, but I specifically declined to intervene based on the information I had, in that SSA Orsini was likely to claim that he was legitimately exploring my accusation that his relationship with a squad member had disrupted the squad. I later discovered that members of his squad felt intimidated by these one-on-one inquiries." ASAC #1 did not specifically address the meeting between yourself and SA #8 on January 3, 2000.

In his signed, sworn statement dated July 6, 2000, the Acting SAC stated, "I know SSA Orsini talked with members of his squad. I recall hearing that he was upset and also a bit heavy handed and may have went too far. I spoke with him about talking with his squad members and I told him I thought it was not a bad thing to do if he did it diplomatically. He was more than likely aggressive and confrontational during the interviews, but I don't believe he was yelling or making gestures at anyone. SSA Orsini did not tell me that he had a heated exchange with [SA #8] or that he threatened to hit [SA #8] during their one on one [sic] meeting."

In your signed, sworn statement dated June 20, 2000, you stated:

> "On or about New Year's Eve, December 1999, I called [SA #8] at his residence. I asked [SA #8] if he wanted to meet with me that day, but he declined because...he had family obligations. So, we talked on the phone... At no time did I discuss my romantic/sexual relationship with [SA #5], with [SA #8]. I was upset, but not angry. I was surprised [SA #8] felt the way he did about the relationship between [SA #5] and myself. I asked [SA #8] if he knew who went to the front office. I did not accuse or

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> suggest [SA #8] was the one, and I told him I did not think it was him and that I was not accusing him. [SA #8] and I were friends so his demeanor towards me disturbed me."
>
> "During the one-on-one meeting with [SA #8], he began the meeting by stating that he wanted a witness present if we were going to talk about the same issues we discussed when I called him at his residence on New Year's eve. He said he didn't appreciate the way I spoke to him and accused him of going to the ASAC. I told him if he didn't want to talk with me, that's fine. I told him I was not accusing him of anything, and that I just wanted to work this out, so that we could continue to be friends. [SA #8] then said okay, I'll talk to you. At some point during our discussion, we were standing very close to each other and I said words to the effect 'if we can't work this out we are going to come to blows.' Although I made this comment I was not threatening physical violence against [SA #8], nor did he act as if he took it that way. I then told him that I just wanted to work things out, and we shook hands shortly after that. I was emotional when I talked with [SA #8], but I was not angry. I did pace back and forth during the interview, I routinely pace, but I was not attempting to intimidate him. I asked [SA #8] to come into my office. I saw this as a supervisor to subordinate meeting, as I did with the other members of my squad. But I considered the meeting with [SA #8] different from the meetings with other squad members because he and I were friends."

Your actions and words towards SA #8 during the private meeting on January 3, 2000, were indicative of intimidation and included an actual threat of physical violence towards a subordinate. Specifically, you admittedly came into close physical proximity to SA #8 at one point and described yourself as "emotional" and "pace[ing] back and forth" throughout the discussion. Secondly, while the accounts vary somewhat as to the actual words spoken, both SA #8 and you described a statement by you which, given the highly charged nature and context of the meeting, readily lent itself to interpretation as threatened physical violence. Specifically, you admitted that while you and SA #8 "were standing very close to each other," you told SA #8, "if we can't work this out we are going to come to blows." Given the overall context in which that statement was made, your assertion that you were "not threatening physical violence against [SA #8]," by such a statement ignores how it could reasonably be interpreted by your subordinate.

Further, I noted the following statements relative to your actions during the course of the inquiry. Specifically, in his signed, sworn statement dated April 20, 2000, ASAC #1 recounted his meeting with you concerning the possibility of an affair between yourself and SA #5. ASAC #1 stated that after he told you that you could no

longer supervise SA #5 and that you were being reassigned, "SSA Orsini angrily left my office." Further, ASAC #1 noted, "After I spoke with [the] A/SAC, I overheard shouting coming from his office and at some point I heard my name being mentioned. SSA Orsini was in [the] A/SAC['s] office detailing the matter." ASAC #1 stated:

> "After I confronted SSA Orsini, I knew that he was tightly wound. I had suggested that he be watched. I recall SSA Orsini telling me that after I first encountered him bout [sic] having sex with [SA #5] that he wanted to knock my head off. At some point, I told SSA Orsini he should be aware that I was not intimidated by him and that if he felt he needed to, he should make whatever move was in his best interest. SSA Orsini has an aggressive personality and I would characterize him as a 'bully.'"

Further, in his signed, sworn statement dated March 1, 2000, [SSA # 2] stated, "In reference to SSA Orsini's demeanor, he has an aggressive and intimidating personality. SSA Orsini was often abrasive and self-centered."

In your signed, sworn statement dated June 20, 2000, you stated:

> "I had a subsequent meeting with [ASAC #1] and [the] Acting SAC, and another meeting after that with [ASAC #1]. In my subsequent meeting with ASAC #1 I explained to him that when he first asked me about [SA #5], I felt like coming over the desk at him. At no time did I attempt to strike [ASAC #1]. I wanted to let him know that this was how I originally felt, but that I hoped to move on. I never had to be restrained by [the] Acting SAC from striking [ASAC #1] and I don't recall ever saying that I had to be."

Your assertion that you were not threatening physical violence against (SA #8) ignores the plain meaning of your words. You may claim that you had no intent to carry through with the threat, but it is essentially undisputed that you made reference to physical violence. When combined with other evidence under this section and the signed, sworn statements concerning the following allegation of Destruction of Government Property, a subordinate's fear that you would lose control of your anger would not be unfounded. Further, your threatening statements were part of a course of conduct on your part intended to identify and intimidate the person who may have reported your personal relationship with a female subordinate to Newark management. Threatening or intimidating behavior by an FBI supervisor in retaliation for such reporting would be unacceptable behavior.

Your attorney responded to this charge by claiming that the "legal standards for making a threat" should be applied with care in this matter since such a charge has been emphasized by the Court of Appeals for the Federal Circuit as a serious offense. He asserted that the evidence "does not rise to the level to legally establish that SSA Orsini made a 'threat' against [SA #8]," since, in essence, to find that an employee has threatened his supervisors or co-workers with violence, the "deciding official must find that the employee actually intended to injure an intended victim." The salient points offered by your attorney were: 1) that SA #8's failure to immediately report your "alleged statement" belied that SA #8 perceived it as a "credible threat;" 2) that you did not perceive that SA #8 was threatened by your conversation with him and that, at the end, you both shook hands and expressed desires to "fix the issues in your friendship;" 3) that your comment was "made as a statement about the future of their personal friendship and not literally as a physical threat against [SA #8's] person" and, that you "used these words as a common, colloquial expression that their long standing friendship was [in] jeopardy;" and 4) that by using "if" when you stated to SA #8 that, "If we can't work this out, we are going to come to blows," your comment was "plainly [made] conditional and that it was not meant literally." Further, by immediately stating afterwards, "I'm only kidding," you established that your statement "was not a real threat to immediately injure [SA #8]." Thus, your attorney concluded that given both factors, "a reasonable person cannot conclude that SSA Orsini met the legal requirement for making a threat because the statement was conditional."

Although the investigative record for this charge was established in the proposal letter, portions of that evidence bear reiteration. Particularly relevant are the comments provided during the inquiry by ASAC #1 and the Acting SAC. Specifically, ASAC #1 stated that he learned that "members of [your] squad felt intimidated by these one-on-one inquiries" and that he found the fact that you conducted one-on-one interviews as "poor judgment and intimidating." The Acting SAC stated that he heard you were "upset and also a bit heavy handed and may have went too far" during your talks with squad members. The Acting SAC also stated that you were "more than likely aggressive and confrontational during the interviews." In essence, those comments reveal that your conduct during the one-on-one interviews was interpreted as intimidating by various squads members despite the fact that none filed official misconduct complaints against you at the time. Thus, the fact that SA #8 did not immediately report your comment is not necessarily indicative of his failure to perceive your words as a credible threat nor does it diffuse the implicit threat those words convey.

Secondly, rather than relying upon your perceptions of SA #8's reactions to your meeting with him, I have relied upon SA #8's signed, sworn statement's description of the events immediately preceding your comment to him. Specifically, SA # 8 stated that you: 1) "appeared agitated and disturbed at the outset, but [your] demeanor worsened" after he initially told you that he wanted another person present or that the

meeting should take place in the front office, 2) "paced back and forth angrily during the meeting,"3) stated it was a"critical time for [you] and that [your] career was on the line," and 4) pulled a chair so close to him that you were virtually "within inches of [his] face." In view of such preliminary displays of anger, I do not consider it irrational for SSA #8, or any other recipient of your comment, to interpret the intent of your words as anything less than an expression of willingness/intent to engage in a physical confrontation.

Lastly, your assertion that your immediate subsequent comment of "I'm only kidding" established that your first comment was "not a real threat to immediately injure" SA #8 is unconvincing. Rather, given the context in which it occurred, it appears far more likely that you recognized, belatedly, that your first statement was inappropriate and was, in fact, interpreted by SA #8 as a threat. That latter conclusion is bolstered by SA #8's signed, sworn statement that you apologized to him several days later for your conduct.

Thus, I find that your conduct in this matter violated the following policy.

The MAOP, Part 13-1(2), states, in pertinent part:

> "It is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ, and it is the continuing responsibility of Bureau officials to see to it that the employees under their supervision are properly indoctrinated regarding this requirement so that they not only will fully understand it but will comply with it."

DAMAGED GOVERNMENT PROPERTY

In his signed, sworn statement dated February 29, 2000, SA #8 stated, "SSA Orsini was very moody and as a result he sometimes created a hostile work environment. At times, I observed him throwing chairs."

In his signed, sworn statement dated March 1, 2000, SA [withheld - hereafter referenced as SA #9] stated, "While talking with SSA Orsini, on several occasions, I would notice him banging on the wall with his fist. This was not unusual behavior for him."

In his signed, sworn statement dated March 1, 2000, SA [withheld - hereafter referenced as SA #10] stated, "I did witness the holes in the wall caused by SSA Orsini. I did witness SSA Orsini throwing chairs. I can't recall exactly when this occurred. I

can't recall the exact reasons for these actions. I don't know if SSA Orsini took these actions out of anger, or just because he could do it or what. I do believe it was inappropriate behavior."

In his signed, sworn statement dated March 1, 2000, SA [withheld - hereafter referenced as SA #11] stated, "I have witnessed SSA Orsini throwing chairs on one or two occasions. I believe it had to do with him being mad at certain Assistant U.S. Attorney's. I did not think it was unusual, it was just out of frustration."

In his signed, sworn statement dated March 1, 2000, SSA #2 stated, "I recall an instance in which he [SSA Orsini] punched a wall and put a hole into it. I recall asking him why he did that and he continued to punch the wall....On another occasion, I recalled SSA Orsini coming into my office and throwing a chair around. I asked him why he did that and he did it again and then left. These two instances were not hostile in nature, but I believe were his way of showing dominance and putting forth a tough guy facade."

During an interview on April 5, 2000, [withheld - hereafter referenced as support employee #1] advised that she witnessed you "punching walls." Support employee #1 stated that she did not believe your actions were "out of anger," but noted that you "had an attitude problem."

In her signed, sworn statement dated February 29, 2000, [withheld - hereafter referenced as support employee #2] stated, "I have seen SSA Orsini lose his temper, which he does on occasion. I have seen him become angry and punch a hole in a wall within the office space of the Newark Division. This took place in approximately 1998. Also in 1998, I also witnessed SSA Orsini, while angry, break a chair which was located by a computer in the C-8 Squad area."

In his signed, sworn statement dated February 29, 2000, SA [withheld - hereafter referenced as SA#12] stated, "I have witnessed SSA Orsini strike the wall outside my office while engaging in friendly conversation with others in the office space. He has punched holes in the wall with his pen and his fist. I do not believe he punched the hole in the wall out of anger."

In his signed, sworn statement dated April 14, 2000, SSA [withheld - hereafter referenced as SSA #3] stated, "I recall the incident in which SSA Orsini put the hole in the wall at the office. SSA Orsini was standing outside the office of [name withheld] when he began punching the wall progressively harder. During this time, I was sitting at the squad lunch table and warned SSA Orsini to stop before he put the hole in the wall, but he did not listen. He eventually hit the wall hard enough to punch a hole and then stopped."

In her signed, sworn statement dated June 20, 2000, SA #5 stated, "Sometime around August of 1998 or early 1999, I did hear him punch a hole in a wall, in the Newark Office. This incident occurred while he was involved in horse-play with several other agents."

In your signed, sworn statement dated June 20, 2000, you stated,

> "I admit to punching a hole in a wall on the 20th floor during the time I was the C-8 Supervisor, approximately two years ago. When I walk down the hall it is my habit to hit the wall with my fist. I do not recall the specific incident which led to me placing the hole in the wall."
>
> "I never purposefully broke the back off a chair. However, I may have pushed chairs around in the squad area when I was a supervisor. I do recall pushing the chairs around in [SSA #2's] office. However, this was good natured bantering between the two of us...."

Your attorney's response to this charge was to reiterate your signed, sworn statement acknowledgment that you have a "habit of hitting the walls" and that your habit "may have caused a hole in the wall." He also acknowledged that you "occasionally pushed chairs around the squad area while engaging in good natured banter." However, your attorney claimed that, in perspective, the damage caused was "actually quite minor" and never intentionally undertaken in order to damage government property.

I find that the evidence substantiated this charge and that the following policy was violated. However, I have mitigated the suspension period associated with this charge based solely upon your attorney's assertions that you did not act with intent to damage government property.

The MAOP, Part I, Section 1-1, under the heading "Activities and Standards of Conduct," states, in pertinent part:

> "...employees should conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them."

Further, the MAOP, Part I, Section 1-3, captioned, "Use of Government Property," states, in pertinent part:

> "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes."

Lastly, the MAOP, Part I, Section 1-3(1), states:

> "All government property, including...supplies, equipment...are to be used solely for official purposes..."

UNPROFESSIONAL COMMENTS/INSENSITIVE REMARKS

In his signed, sworn statement dated March 1, 2000, SA [withheld - hereafter referenced as SA #13] stated, "I can recall, on several occasions, usually after 6:00 P.M., SSA Orsini coming down the hall on the 20th floor...using a bull horn to amplify his voice, directing comments in the direction of [SSA #2's] office. In these comments SSA Orsini would say words to the affect 'all homosexuals come out of your offices' and/or '[SSA #2], come out with all the other homosexuals.'"

In his signed, sworn statement dated April 6, 2000, SSA [withheld - hereafter referenced as SSA #4] stated, "I did hear, on occasion, SSA Orsini, using a bull horn to magnify his voice, saying words to the affect 'all homosexuals come out of your offices.' These comments would generally be made in the direction of [SSA #2's] office and were made in the evening hours."

In his signed, sworn statement dated July 6, 2000, the Acting SAC stated, "Regarding the inappropriate remark about the sexual orientation of [SSA #2], I was aware of it. SSA Orsini and [SSA #2] had called each other 'homos' in front of me. I saw nothing wrong with it and dismissed it as playful bantering. Initially, [SSA #2] and SSA Orsini were good friends. However, I was not aware of SSA Orsini using a bull horn and hollering down the hallway for 'all the homosexuals to come out and that this includes you [SSA #2].' I could see SSA Orsini making that remark, but mainly as a humorous gesture."

In her signed, sworn statement dated June 20, 2000, SA #5 stated, "I have overheard both SSA Orsini and [SSA #2] engage in office banter which included accusing each other of being homosexuals. These accusations were clearly made in a joking manner. I am aware that on one occasion, [SSA #2] left a message on [SA #8's] voice mail, which stated, '[first name withheld], suck it, suck it now.' [SA #8] recorded the message and plays it in the squad area from time to time. When SSA Orsini heard the message, he said to [SSA #2], 'What are you, a flaming homosexual?' It was clear

that this was said in a joking manner. When SSA Orsini made the comment, about five people were standing around and joking about the recording." SA #5 also stated, "I would like to point out that SSA Orsini has stopped other people from making jokes about sexual orientation. On several occasions, [SA # 6] has made derogatory comments about the sexual orientation of a female supervisor [withheld - hereafter referenced as SSA #5]. SSA Orsini has asked [SA # 6] to stop when she starts making such comments."

In his signed, sworn statement dated November 30, 2000, SA #8 stated, "I recall sometime in 1998 or possibly early 1999, the specific month or date I cannot recall, I received a message on my telephone recorded from [SSA #2], with whom I was good friends at the time this message was left,...I do have a recollection of the message containing sexual innuendo. I also believe the message may have referred to SSA Brad Orsini, in some way. At the time of this message, SSA Orsini, [SSA #2], and myself were on very good terms and we often engaged in harmless horseplay and verbal bantering. I recall recording the message...and playing the message of [sic] SSA Orsini. I recall that SSA Orsini found the message very amusing and indicated to me, in a joking way, that he needed to get [SSA #2] back for leaving the message. I cannot recall playing this message for other members of my squad,... although I may have. I am not aware of SSA Orsini playing the message for members of the squad, although he may have. I recollect that SSA Orsini, after using the recording to joke around with [SSA #2], returned the tape to either myself or [SSA #2]. I further recall that [SSA #2] did not want SSA Orsini to keep the recording I had given him (SSA Orsini). I have looked for the recording and could not find it."

In his signed, sworn statement dated January 22, 2001, SSA #2 stated: "Sometime after June of 1998, the exact date I cannot recall, I placed a telephone call to [SA #8],...I believe I may have said the following on his answering machine: '[First name identifier withheld], suck it, suck it now.' After leaving this voice mail message for [SA #8], I later learned that SSA Bradley Orsini,...had heard the message I left for [SA #8] and had somehow made or obtained a copy of this voice mail message. SSA Orsini kept this copy of the voice mail message in his office desk and, on occasion, played it in the C-8 squad area to tease me. I do not believe that SSA Orsini's actions exhibited any malice towards me, rather he was merely playing the message in an effort to be funny. At times, other agents would be present when SSA Orsini played this message in the squad area. No one ever confronted me with concern regarding the content of this message nor do I believe that anyone who heard the message found it offensive or inappropriate. To the contrary, all present, on those occasions, when when [sic] the message was played in my presence, would heartily laugh." Lastly, in a telephonic interview on January 26, 2001, SSA #2 recalled that, on a number of occasions, you walked through the Newark FBI Office space near his office and, while using a bull horn to magnify your voice, said something to the effect of 'All

Mr. Bradley W. Orsini

homosexuals come out of your offices and that means you, [SSA #2].' However, SSA #2 stated that he was not offended by this verbiage and believed that you were just trying to be funny.

In your signed, sworn stated dated June 20, 2000, you stated:

> "I admit to making derogatory comments to [SSA #2] regarding homosexuals while I was the C-8 supervisor. On several occasions I would use my bull horn to holler down the hall and make these comments, which were directed at [SSA #2]. I would call him a 'flaming fag' or 'homo' and [SSA #2] would say the same to me. This was light hearted bantering between [SSA #2] and myself. [SSA #2] would return the banter calling me similar names and saying I was a 'pickle smoocher.' I admit this was inappropriate and I would not do this again. In response to a question posed by the OPR investigators, I admit that my relationship changed with [SSA #2] approximately the fall of 1999, for reasons unknown to me. We are no longer friends."

Your attorney acknowledged that you engaged in "unprofessional and insensitive remarks" in responding to this charge. However, he asserted that your remarks were "made during good natured, mutually engaged in banter in the squad area and were not viewed as offensive or malicious by the recipients or bystanders." Your attorney also pointed to the fact that the ASAC acknowledged that he "observed [your] behavior" and that he "did not correct [that] behavior." You personally addressed the homophobic comments depicted in this charge during the telephonic presentation by stating, in pertinent part, that you completely agree that your behavior was wrong and that what you saw, at the time, as "harmless banter" is now known to you as inappropriate and will never occur again. I noted that neither you nor your attorney addressed the repeated, but undefined number of occasions when you played a tape recording which contained vulgar sexual content, in the squad area and while squad members were present.

I have carefully considered your stated acceptance of the wholly unacceptable nature of the repeated and amplified homophobic comments in front of squad members and your personal assurances that such conduct will never be repeated. However, in deliberating the appropriate sanction level for this charge, I noted the clarity of the 1993 and 1997 regulations which were in effect when your misconduct occurred. In particular, the Airtel dated 1993, clearly articulated the requirement that the Bureau's management officials ensure the "working environments within their span of control," remain free of situations where a "locker room atmosphere" represses professional conduct. Should such situations arise, managers are charged with alerting those

employees with a "penchant for vulgar language, sexually degrading statements or jokes" that "such conduct is offensive, unwelcome and inappropriate in the workplace" and "subject to disciplinary action."

Thus, by repeatedly making homophobic comments, amplified to ensure all present heard them, and repeatedly playing a sexually vulgar tape recording while squad members were present, your actions directly contradicted the intent of the existing regulations relative to work place standards of conduct, created and entrenched a locker room atmosphere among your subordinates, and allowed for the perception among past and present Newark personnel, that managers are exempt from adherence to the same levels of conduct expected of all other employees. Your conduct in this matter violated the following policy:

In an Airtel dated June 11, 1993, and captioned "Sexual Harassment Policy," the Director advised:

> "...I expect FBI managers to regularly and honestly assess the working environments within their span of control and to initiate corrective action to rectify those situations where a juvenile, locker room atmosphere represses professional conduct and achievement. The discussion of this topic should alert those employees with a penchant for vulgar language, sexually degrading statements or jokes,...that such conduct is offensive, unwelcome, and inappropriate in the workplace, and it is subject to disciplinary action."

Further, in an Airtel dated July 24, 1997, the Director stated, in pertinent part:

> "Examples of conduct which may be considered sexual harassment or create a hostile work environment, whether committed by supervisors or fellow employees, may include, but are not limited to, oral or written comments of a sexual nature; comments regarding an individual's body; statements, anecdotes, jokes, teasing and/or gestures of a sexually degrading nature which are used to describe an individual; physical contact or threats of physical contact; and display of books, magazines, or pictures of a sexual nature that are, in the view of the recipient, offensive and unwelcome."

In summation, I find that you improperly documented a consent to search and an ammunition seizure during 1993; repeatedly and intentionally falsified a number of official documents in the form of FD-302s; engaged in an improper personal relationship with a subordinate which caused the perception of favoritism and disruption to the squad and its morale; engaged in words and actions which were indicative of intimidation and the threat of physical violence towards a subordinate; damaged

government property, specifically, furniture and by punching holes in the walls of the Newark Office; and engaged in inappropriate comments on an undefined number of occasions and used a bull-horn to amplify such comments while subordinate personnel were present, and played a tape recording, which contained vulgar sexual content, within the squad area and while squad members were present.

Lastly, I noted that several documents were submitted with the written response material which emphasized the author's belief that you can be rehabilitated as an SSA as a result of your having experienced the OPR inquiry and your new awareness of the impropriety of your overall conduct as defined during that process. Most notable among them were the comments provided by the same ASAC who provided evidence against you during the inquiry and the comments of the newly assigned SAC of the Newark Office. Further, it should be stressed that during the initial adjudication of your case and currently, emphasis was placed upon the fact that your work record at the FBI has remained at a consistently high level and that you have been recognized for those efforts through various awards. However, the investigative record is replete with instances of your intentional failure to conduct yourself in a manner consistent with prevailing regulations and show a perception of you, as a manager, which is consistently depicted as aggressive and intimidating and has elements indicative of an anger control issue. The latter issue remains of concern despite your assertions that you are not an angry individual.

Therefore, your actions in this matter violated well-established Bureau policies and procedures as stated above and the trust inherently placed in management personnel of the FBI. Accordingly, I am demoting you from an SSA GS -14 to an SA GS -13, suspending you from duty for 30 calendar days, without pay, placing you on probation for twelve months and referring your case to the OEEOA in order that you may receive mandatory sensitivity training at the earliest opportunity. This action is warranted and necessary to promote the efficiency of the FBI. Should similar misconduct be brought to my attention, I will not hesitate to impose a more severe action, including your dismissal from the rolls of the FBI, if warranted.

APPEAL RIGHTS

Should you desire to appeal this action, you may address your written response stating the grounds on which you base your appeal to the Assistant Director (AD), Inspection Division (INSD), Room 7825, U.S. Department of Justice, Federal Bureau of Investigation, J. Edgar Hoover Building, 935 Pennsylvania Avenue, Northwest, Washington, D.C. 20535-0001. Any appeal must be filed within thirty (30) calendar days following notification of the disciplinary action. *The punishment imposed by this letter is **not** postponed pending your appeal.* Upon receipt of an appeal of a suspension of 14 calendar days or less or a probation action, the AD or Deputy AD,

INSD, will personally review and decide the appeal. Upon receipt of an appeal of a suspension of more than 14 calendar days, dismissal, or demotion, the AD, INSD, will establish a Disciplinary Review Board (DRB) to review the action taken by the OPR. In exercising appellate authority, INSD and a DRB may independently redetermine the factual findings and/or the penalty imposed. Should you wish to employ an attorney to assist you in this appeal, you must ensure that the enclosed forms on the disclosure of FBI information be completed prior to any disclosure of Bureau information to the attorney handling your appeal. If you and the attorney who will assist you on appeal have earlier completed and provided these forms to the Bureau in connection with this case, these forms do not need to be reaccomplished. You are referred to the Director's Memorandum to all SACs dated March 5, 1997, for additional details pertaining to appeals.

Sincerely yours,

Michael D. DeFeo
Assistant Director
Office of Professional
Responsibility

NOTE: The enclosed letter should be delivered to the employee within five business days at which time it should ensured that the employee fully understands the reason for the Bureau's action. The punishment imposed by this letter is **not** postponed pending the employee's appeal. The OPR will leave the determination as to whether a loss of effectiveness transfer is warranted to the discretion of the SAC, Newark.

✓ **DEMOTION:** It is your responsibility to ensure that the SF-52, request for Personnel Action, is electronically entered into the Bureau Personnel Management System (BPMS) for this demotion action. The demotion should be effective the first pay period following presentation of this letter to the employee.

SUSPENSIONS: The following procedures must be applied in effecting suspensions:

* You must (1) determine the effective dates of the suspension, and notify the employee of those dates, within seven calendar days of presentation of the letter to the employee; **and** (2) make the effective dates of the suspension no later than 21 calendar days from the date of presentation of the letter to the employee. If you are unable to satisfy **either** criteria, please contact the Unit

Chief, Adjudication Unit I (AU I), OPR, x-4993, for approval of an alternate plan. Generally, delays should be based primarily upon operational considerations; however, personal constraints can be considered in extraordinary circumstances.

* All suspensions **must** commence at the close of business on a Friday. Extraordinary circumstances may dictate the beginning of a suspension on another day due to varied work schedules. In those cases, contact the AU for guidance.

* Suspensions **must** be calculated in **calendar days** (seven calendar days = five workdays), and may be imposed over holidays. (Refer to MAOP, Part I, Section 13-13 (2) for further clarification.)

> Example: A suspension from close of business 11/8/96 through close of business 11/13/96 is equal to five calendar days. The employee's return to duty date would be 11/14/96.

* Once you are sure of the date the suspension is to be effected, you should **immediately** enter the SF-52 into the Bureau Personnel Management System (BPMS). Upon the employee's return to duty, you should immediately enter into BPMS the SF-52 for the employee's return. If you are unable to enter the employee's return to duty SF-52, you must contact the Pay Administration and Support Staffing Unit, x-4143 for guidance.

ADMINISTRATIVE: Bureau property in the custody of this employee should be secured and retained until employee returns to duty.

PROBATION: Employee should be reminded that the probationary period is for twelve months. Period of probation should begin the first working day upon return to duty. During the probationary period, employee should be closely supervised. At the expiration of this period, the Bureau will automatically remove the employee from this status.

November 2, 1998

PERSONAL

Mr. Bradley W. Orsini
Federal Bureau of Investigation
Newark, New Jersey

Dear Mr. Orsini:

I have completed my review of the administrative inquiry regarding allegations that you violated Bureau policy when you signed another agent's name to evidence control forms without the agent having been present or having verified the valuable/drug evidence.

I have specifically relied upon your signed, sworn statement, dated September 3, 1998, wherein you stated:

> ". . . On a limited number of occasions, I along with my fellow agents, [name deleted] and [name deleted], would sign one another's name on the evidence packaging regarding the drugs purchased or money seized during this investigation. There was no other reason for doing this other than to save time. I categorically reject any notion that my signing for [name deleted] involved any impropriety with the evidence seized . . . "

By signing another agent's name to the evidence control forms, you violated the following Bureau policies:

The Manual of Administrative Operations and Procedures (MAOP) states in Part II, Section 2-4.4.8 (3) that:

Enclosure was provided to SSA Orsini on 11/6/98 @ 10:00 A

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
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FBI — NEWARK
Orsini

Mr. Bradley W. Orsini

"(3) Valuable evidence is to be independently **counted/verified** by two officials. The sealing official is to be a federal criminal investigative agent or deputized officer; the witnessing official may include the ECT, the paralegal specialist, or other support employee directly involved in the process of seizing, packaging, and initial documentation of the evidence. **They are to verify the accuracy of the count and/or detect any errors before the evidence is sealed and placed in storage.**" (Emphasis added)

The MAOP, Part I, Section 1-1(9)(n), states:

"Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards . . ."

While I did not find that you possessed an intent to compromise either the evidence or the case, I did find that your conduct could have caused either personnel of the judicial system or defense attorneys representing the subjects of your Group II investigation to impugn the integrity of the Bureau and its evidence handling practices. While no prosecutorial damage to the Bureau or the Group II has occurred at this time, you are reminded that in the future you are expected to adhere to Bureau policies and you must at all times conduct yourself in a manner that is beyond reproach.

I have taken into consideration your lack of intent to commit wrongdoing, your positive work record, the comments of your Division Head, and the overall success of the Group II. However, none of the above mitigating factors excuse your actions.

To impress upon you the seriousness with which I view your signing of another agent's signature and your violation of Bureau evidence handling policy, I am hereby suspending you from duty for five calendar days without pay.

In the event that I have to address a similar matter with you in the future, I will not hesitate to impose a more severe sanction, up to and including dismissal.

Mr. Bradley W. Orsini

Sincerely Yours

C. Frank Figliuzzi, Chief
Adjudication Unit II
Office of Professional
Responsibility

September 24, 2001

PERSONAL

Mr. Bradley W. Orsini
Federal Bureau of Investigation
Newark, New Jersey

Dear Mr. Orsini:

I have thoroughly reviewed all documentation pertaining to the charges against you which served as the basis for your proposed demotion from a GS -14 Supervisory Special Agent (SSA) to a GS -13 Special Agent (SA), suspension for 45 calendar days, without pay, probation for twelve months [redacted] Each of these charges was fully defined to you in the Office of Professional Responsibility (OPR) letter dated April 10, 2001.

As the deciding official in this matter, I have given full and impartial consideration to all documentation and evidence upon which the proposed actions were based, the information provided within the written response submitted by your attorney dated August 3, 2001, and the telephonic presentation comments offered by your attorney and you on August 13, 2001. I find, based upon a preponderance of evidence, that the allegations that you [redacted] falsified official documents; [redacted] have been substantiated. [redacted]

1 - SAC, Newark (Personal Attention) [redacted]

[redacted]

10/12/01

Mr. Bradley W. Orsini

FALSIFICATION OF OFFICIAL DOCUMENTS

This allegation addresses various FD-302 forms executed during 1993 and 1994.

In his signed, sworn statement dated November 5, 1998, SA #2 stated, "SA Orsini and I never had an agreement or understanding between us about signing each other's initials on Bureau documents in this case. It is the responsibility of an FBI SA to sign his or her own initials next to his or her own name, as appropriate, on Bureau documents, including FD-302s. I do not recall authorizing anyone to sign my initials on a Bureau document in this case..."

SA #2 confirmed his review of the following documents: two original FD-302's each dated October 8, 1993; an original FD-302 dated October 13, 1993; an original FD-302 dated June 16, 1994; an original FD-302 dated February 3, 1994; and, an original FD-302 dated February 1, 1994. The SA stated, "I did not write my initials on any of these documents which, as noted above, are original FD-302s. I do not know how my initials appeared on these documents." He concluded by stating, "I have no knowledge of anyone falsifying anything in this case file other than the FD-302s on which my initials were written by someone else. I am not aware of anyone altering, changing, or replacing anything in this file."

In your signed, sworn statement dated January 21, 1999, you stated your understanding that FBI policy requires all individuals who conduct investigations, reported in the form of an FD-302, to read, review and initial next to their names on the bottom of the form, reflecting their review and agreement with the FD-302's content, before submitting it to file. You stated, "It is my understanding that the purpose of the policy is to verify the accuracy of the content of the FD-302 before it is placed into the file."

When asked for an explanation of your understanding of the potential impact of an FD-302 with falsified initials being entered into evidence or produced to the defense through the discovery process, you stated, "My response is that it could be a potential problem. If an SA were to take the witness stand and testify that the initials on the FD-302 had not been written by himself/herself or testify that the SA disagreed with the

content of the FD-302, there would be a problem. I do not perceive it as a problem if the information in the body of the FD-302 is accurate but the initials are written by another agent. I do not know what the ramifications could be on a case if such a circumstance were to occur. I guess it would be a violation of Bureau policy for someone other than the SA on the 'investigation by' line of an FD-302 to write that SA's initials next to his/her name."

You also stated:

> "I have affixed the initials of another SA to an FD-302 on the 'investigation by' line. I have no idea how many times I may have done so. I have no way of quantifying the number of times I may have done so. I cannot recall the circumstances under which I may have affixed the initial of other SAs to FD-302s. It is likely that I would have done it if the squad rotor had come to me and said she needed to put an FD-302 into the file and it needed to be initialed. Under those circumstances, I would have written my initials and/or the initials of the other SAs involved in the reported investigation on the FD-302. Other than the rotor bringing FD-302s to me, I cannot think of any other circumstance which would have necessitated my affixing the initials of another SA to an FD-302."

When you were asked why the other SAs would be unable to affix their own initials, you responded by stating that they may not have been available. You stated, "I wrote their initials because it was a convenience and a shortcut." You added that there were "probably hundreds" of FD-302s prepared by other SAs which went through the rotor's desk and that it was probable not all of them had the preparing SAs' initials on them when sent to the rotor for filing. You did not recall how the idea of affixing other SAs' initials to the FD-302s arose.

Relative to SA #2, you stated, "There was no specific meeting between us in which we agreed that I would write his initials on FD-302s reflecting investigations he had conducted or ~~in~~ which he had participated. However, [SA #2] and I had an implied understanding that we could affix initials on FD-302s for one another."

When you were asked on how many occasions you affixed the initials of another SA to an FD-302, you responded that you did "not believe there were any SAs other than [SA #2] for whom I would have affixed their initials to an FD-302. There probably were no other such SAs." You did not recall any discussions or conversations with other SAs during which they specifically discussed your writing their initials on an FD-302. When questioned if there were ever any occasions when you affixed the initials of another SA to a Bureau document without obtaining that SA's authorization, you responded, "no, not really."

Mr. Bradley W. Orsini

You were asked if you ever authorized another SA to affix your initials to an FD-302 or other documents in the [subject's name withheld] case and responded that you did not believe you expressly did so. However, you reiterated that you "impliedly gave [SA #2] permission to do so." You stated, "I do not know of anyone else ever writing my initials on a document in the [subject's name withheld] case, other than [SA #2]." You indicated that you were questioned if you ever authorized another SA to affix your initials or signature to any Bureau documents beyond those that the Bureau was already aware of. You responded that you did not believe so but that it was "possible." You could not "think of any circumstances when [you] would have done so" and stated that "it would not be a common practice for me to engage in such activity."

Lastly, you stated:

> "[SA #2] and I had an implied understanding that we could initial each other's FD-302s. I believe that other SAs on C-13 had the same understanding about writing each other's initials on FD-302s. I believe that none of the other SAs on C-13 would be surprised to learn that I had written their initials on FD-302s. The other SAs on the squad might deny to OPR that there was such an implied understanding among us, but there was. My only reason for writing other SAs' initials on documents was that it was expedient and it served as an administrative shortcut."
>
> "It is likely that I have written the initials of other SAs on documents in other Bureau files. However, I cannot begin to recall how many times I may have done so or in which files."

In response to this charge, your attorney acknowledged that you accept responsibility in this matter but offered several factors which, according to your attorney, "substantially mitigate the significance of this charge." Specifically, your attorney claimed: 1) that you have "already been punished for substantially the same conduct...in November 1998, for placing other Agent's initials on chain of custody documents ~~between~~ 1994 and 1996," and that you have not engaged in similar misconduct since the November 1998 sanction; 2) that you did not enter inaccurate or false information on the FD-302s at issue nor intend to compromise the integrity of any investigation; 3) that the FD-302's at issue were "administrative file copies," which you initialed for purposes of "administrative expediency and convenience," and which you believed would not be used in litigation; and, 4) that this charge is "quite stale" and, given the prior investigation concerning you, the Bureau "reasonably should have been aware of it much earlier than seven to eight years after the fact."

Mr. Bradley W. Orsini

It is a matter of official record that you were suspended from duty for five calendar days, without pay, in November 1998, on the substantiated charges that you falsified chain of custody forms and evidence labels between May 1995 and January 1997. Further, the falsified FD-302s which could be identified in the current inquiry occurred during 1993 and 1994, or prior to the falsifications for which you were sanctioned in November 1998. I disagree with the premise that because you were sanctioned for falsifying one type of official document between 1995 and 1997, you are immune from punishment for subsequently discovered misconduct in falsifying a different type of document in 1993 and 1994. However, the age of the offense, your prior punishment and the absence of any indication that you continued this conduct after 1997 have been taken into account in determining that the appropriate period of suspension should be 30 calendar days rather than the proposed 45 calendar days.

As denoted in the proposal letter dated April 10, 2001, the current charges are of extreme significance and can not be reconciled with the fundamental principles of integrity required of all Bureau employees. Your signed, sworn statement's admission that, in addition to those FD-302s which could be identified during the inquiry as falsified between 1993 and 1994, you had "no idea how many times" you had falsified other FD-302s, remains of grave concern. You are advised that this charge, by itself, carried the potential for your dismissal from the rolls of the FBI under the provisions of the former Director's policy Airtel dated May 3, 1993.

Relative to the second and third issues cited above, I note that you asserted during the inquiry that you did not change the contents of the FD-302s at issue but merely affixed the initials of other SA(s) to FD-302s as "a convenience and shortcut." Thus, your attorney's paraphrasing of your initial assertions by claiming that you acted solely for "administrative expediency and convenience," offered no new element of mitigation to this matter. Secondly, your attorney's description of the falsified FD-302s identified during the inquiry as "administrative file copies" is considered intentionally misleading. As acknowledged within your signed, sworn statement, all of the FD-302s reviewed by you during the inquiry were original documents and not mere duplicates, as inferred by use of the words "administrative file copies." Lastly, as you are aware, an SA's initials are only applied to original FD-302's and therefore, a true administrative file copy would not be initialed.

The fourth issue cited by your attorney bears exploration. As you are fully aware, the current inquiry consists of four separate investigations, initiated between August 1997 and May 2000, which were consolidated during the adjudication process. Specifically, and in sum, the first inquiry was initiated on August 29, 1997, and was subsequently enhanced on November 9, 1998, to address, in part, the falsified documents at issue between 1993 and 1994. You provided a signed, sworn statement in that matter on January 21, 1999, or approximately two months after the allegation first arose. Nevertheless, it is obvious that while the investigation was undertaken