

1 WILLIAM L. OSTERHOUDT (SBN 043021)  
2 DOLORES T. OSTERHOUDT (SBN 215537)  
3 Law Offices of William Osterhoudt  
4 135 Belvedere Street  
5 San Francisco, California 94117  
6 Telephone (415) 664-4600  
7 Facsimile (415) 664-4691  
8 Email: osterhoudt@aol.com

9 Attorneys for Defendant,  
10 ROBERT HOLLOWAY

11  
12 IN THE UNITED STATE DISTRICT COURT,  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA  
14

15 UNITED STATES OF AMERICA, ) **Case No. CR-08-00224-OWW**  
16 )  
17 Plaintiff, ) **DEFENDANT ROBERT HOLLOWAY’S**  
18 vs. ) **MOTION FOR IMMEDIATE DISCLOSURE**  
19 ) **OF EVIDENCE OF POSSIBLE**  
20 ROBERT HOLLOWAY, et. al., ) **GOVERNMENT MISCONDUCT IN ITS**  
21 ) **WIRETAP APPLICATIONS HEREIN, AND**  
22 Defendants. ) **FOR RELATED BRADY EVIDENCE, AND**  
23 ) **FOR AN ORDER PRESERVING EVIDENCE**  
24 ) **PENDING HEARING**

25 **Date: TBD**  
26 **Time: TBD**  
27 **Place: Honorable Oliver W. Wanger**  
28

29 **INTRODUCTION**

30 On April 23, 2009 Defendant Robert Holloway filed a motion to suppress the wiretap  
31 evidence in this case emphasizing, *inter alia*, the failure of the government to demonstrate a  
32 necessity for the wiretaps and pointing out several instances where the government’s allegations in  
33 support of eavesdropping appeared misleading or incorrect. As set forth in that motion, defendant  
34 is preparing and will file a subsequent motion based on *Franks v. Delaware*, dealing with  
35 widespread misrepresentations in the wiretap pleadings.  
36

1 On May 15, 2009 the government brought to the attention of defense counsel documents  
2 which appear highly relevant to the legitimacy of the wiretap applications, and may indeed  
3 undermine the integrity of the entire prosecution. This information came with a letter to defense  
4 counsel from the United States Attorney's Office, referring to a website which, according to the  
5 AUSA, "may contain material responsive to your [defense counsel's] discovery motions."  
6 Counsel then obtained the attached documents from the website which turns out to be a Blog  
7 containing a number of letters and postings that relate to ATF Agents. Included is a letter which  
8 appears to outline information regarding the obtaining of the wiretap in the Holloway case. The  
9 writer, representing himself as a present of former ATF Supervisor, makes a serious allegation that  
10 perjured affidavits may have been used to obtain a court order and authorization to conduct  
11 electronic surveillance of Mr. Holloway's telephone conversations. According to the writer,  
12 Officers pursuing a campaign against Mr. Holloway ignored protestations that ATF Agents had  
13 successfully infiltrated Road Dog Cycle, insisting upon what the writer referred to as an "illegal  
14 wiretap." The writer states that he opposed the wiretap plan "from both investigative and ethical  
15 positions," advising task force officers that he could not support their desire to use a federal  
16 wiretap as a shortcut which he regarded as "premature, and at this stage, illegal."

17 The Agent in question claims to have corresponded with one of the Assistant United States  
18 Attorneys involved in this prosecution and to have obtained documentation from the AUSA  
19 establishing his firm and principled opposition to the government's conduct. Without naming  
20 names, the complainant notes that an individual (clearly Mr. Holloway) "was a longstanding target  
21 of investigation for the Stanislaus Sheriff's Office." The Officers brushed aside the writer's  
22 protests to the effect that he had "two ATF Agents undercover in the case who had quickly  
23 managed to gain direct first-hand access to [redacted, but undoubtedly Road Dog Cycle and  
24 various Hells Angels allegedly connected to it]. Without referring to the controversy surrounding  
25 this matter, in his initial wiretap affidavit the FBI Affiant noted that these two agents had been  
26 utilized. But no explanation was given in the Agents' wiretap affidavit for their departure from the  
27 undercover investigation and this was an issue about which we complained in our April 23, 2009  
28 motion to suppress electronic surveillance. Only now do we have what may be the explanation for

1 the discontinuance of this apparently successful avenue of undercover investigation in favor of  
2 wiretaps.

3 The enclosed material suggests that the Officers pushing wiretaps in the Holloway case  
4 were motivated by a strong desire to build a case against him and were willing to take illegal short  
5 cuts to pursue this objective through electronic surveillance. The writer states flatly that “the  
6 officers committed perjury in their application affidavit for the tap.” We do not know when this  
7 material first appeared on the ATF Blog, but the prosecutor’s letter suggests that his office had  
8 “become aware” of the website. Regardless of when the prosecutors saw the website, it appears  
9 that they were aware of the allegations made by this whistleblower and that he was probably in  
10 contact with at least one of the trial prosecutors at or near the time the wiretap application was first  
11 made. He apparently was demoted or replaced because of the controversy and this could not have  
12 been unknown by the prosecutors in this case or by the Agents who had been pressing the case  
13 against Mr. Holloway. The writer speaks also of “witch hunts” involving law enforcement officers  
14 who have given offense to those pursuing a campaign against Mr. Holloway.

15 Of course at this stage we cannot know whether these charges are accurate, in whole or in  
16 part, or whether the serious charges made against the prosecution in this case were justified. It is  
17 clear, however, that the writer knows a good deal about the case and was almost certainly involved  
18 in the Holloway undercover investigation at a high level. The existence of these charges should  
19 have been made known to the defense and the Court long ago, and certainly should have been  
20 disclosed once the defense had challenged the legitimacy of the wiretaps based in part of an  
21 absence of continued undercover activity that appears to be explained by this writer. Yet no  
22 mention was made of the existence of these charges until now, presumably shortly after the letter  
23 appeared on the Blog, making it likely that someone would discover it. We do not prejudge this  
24 matter but feel that it should have been disclosed, and must now be investigated. Accordingly, we  
25 ask the Court to take steps to ensure that all relevant evidence is brought forward concerning this  
26 matter, that materials in the hands of Federal and Local law enforcement authorities be  
27 safeguarded from destruction, and that witnesses not be intimidated or dissuaded from testifying.

**DEFENDANT'S REQUESTS FOR DISCLOSURE**

In the interest of arriving at the truth, which may either confirm or dispel the shadow that has been cast upon this prosecution, Defendant Holloway requests that:

1. the Court issue an Order requiring the FBI, ATF, Stanislaus County District Attorney's Office, and Stanislaus County Sheriff's Department to preserve intact all evidence, memoranda, notes, email correspondence, and other documents, of whatever kind or description, pertaining to the subject matter of the attached letter, including conflict between law enforcement agents and agencies concerning efforts to exhaust traditional investigative methods instead of premature wiretapping;
2. the Court Order the government to produce all evidence and disclose all information in its possession concerning this matter, including correspondence with anyone in law enforcement questioning the federal wiretap affidavits in this case, and all notes, memoranda, emails, and other documents bearing upon this question;
3. the Court direct the government to obtain from the FBI, ATF, and local police agencies, including the S.C.S.O. and S.C.D.A.O. which are in anyway affiliated with task force activities in this case, all documents of whatever kind or description pertaining to the subject matter of the attached letter, including conflict between law enforcement agents and agencies concerning efforts to exhaust traditional investigative methods before wiretapping;
4. the Court direct the government to produce all Brady material to the defense forthwith, specifically including all material relevant to the subject matter of this motion. This disclosure should include the name, and whereabouts of the writer and the identities of all witnesses having knowledge of this matter including the Officers with whom the writer came into conflict in their pursuit of a Federal Wiretap Order against Mr. Holloway.

- 1 5. the Court Order the requested materials and information be disclosed both to the Court
- 2 and to counsel for Mr. Holloway as soon as practicable, so that this issue may be fully
- 3 resolved and put to rest;
- 4 6. the Court may wish to seriously consider recusing the United States Attorney's Office
- 5 from litigating this matter, particularly if the facts support the claim that the Office was
- 6 itself involved in communications concerning the controversy about wiretapping that is
- 7 described; and finally,
- 8 7. the Court should schedule a hearing where the items produced in response to this
- 9 request may be discussed and the allegations involved herein may be fully litigated.
- 10 Testimony may be taken at this hearing and any punishment, demotion, or harassment
- 11 of prospective witnesses should be forbidden.

12 **CONCLUSION**

13 Defendant takes no pleasure in bringing this matter to the Court's attention and is deeply  
14 disturbed by the allegations. We find it disturbing the allegations were not brought to our attention  
15 earlier, but nevertheless recognize that there may be a legitimate explanation and that the charges  
16 may prove groundless. But Mr. Holloway has, in our view, been the victim of an extraordinarily  
17 vigorous campaign of vilification, including even a false claim that he lied during the murder trial  
18 wherein he was exonerated by a jury. Some of the excesses we have seen in this prosecution lend  
19 credence to what this complainant says. Nevertheless, our minds should remain open and  
20 judgment suspended until the matter is resolved to the full satisfaction of the Court.

21 We raise the matter now because the issue goes not only to the validity of the wiretap  
22 pleadings, but to the integrity of the prosecution itself. It has long been established that an  
23 indictment founded on egregious government misconduct cannot stand, and while dismissal on this  
24 ground are indeed rare, the existence of the remedy compels us to investigate whether it is  
25 applicable under these unique circumstances.

26 Date: May 19, 2009

Respectfully submitted,

27 /s/ William L. Osterhoudt  
28 WILLIAM L. OSTERHOUDT

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 135 Belvedere Street, San Francisco, California 94117.

On the date set forth below, I caused to be served the foregoing **DEFENDANT ROBERT HOLLOWAY'S MOTION FOR IMMEDIATE DISCLOSURE OF EVIDENCE OF POSSIBLE GOVERNMENT MISCONDUCT IN ITS WIRETAP APPLICATIONS HEREIN, AND FOR RELATED BRADY EVIDENCE, AND FOR AN ORDER PRESERVING EVIDENCE PENDING TRIAL** on all interested parties in this action by causing same to be served electronically to the following:

AUSA **Laurel Jackson Montoya** at email address: [laurel.j.montoya@usdoj.gov](mailto:laurel.j.montoya@usdoj.gov); and  
AUSA **Mark Eugene Cullers** at email address: [mark.cullers@usdoj.gov](mailto:mark.cullers@usdoj.gov)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2009 in San Francisco, California.

/s/ Dolores Osterhoudt  
DOLORES OSTERHOUDT



U.S. DEPARTMENT OF JUSTICE

*United States Attorney  
Eastern District of California*

*Lawrence G. Brown  
Acting United States Attorney*

Robert E. Coyle  
United States Courthouse  
2500 Tulare St., Suite 4401  
Fresno, CA 93721

Phone 559/497-4000  
Fax 559/497-4099  
TDD 559/497-4500

May 15, 2009

See Attached List of Counsel

Re: United States v. Robert C. Holloway, et al.  
1:08CR0224 OWW

Dear Counsel:

This office has become aware of a website that may contain material responsive to your discovery motions. The website address is: <http://clearspatf.org/blogs/?s=wiretap&y=14>.

If you have any questions, please do not hesitate to contact myself or Ms. Montoya.

Sincerely yours,

LAWRENCE G. BROWN  
Acting United States Attorney

*by*  
*for* *Mark E. Cullers*  
MARK E. CULLERS  
Assistant U.S. Attorney

MEC:mgr

Enclosures

**United States v. Robert C. Holloway, et al.**  
**CR.F. 1:08CR224 OWW**

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**Roger Keith Vehrs**  
Law Offices of Roger K. Vehrs  
2300 Tulare Street, Ste. 250  
Fresno, CA 93721

**Eric Vincent Kersten**  
Office of the Federal Defender  
2300 Tulare Street, Suite 330  
Fresno, CA 93721

**Anthony P. Capozzi**  
Law Offices of Anthony P. Capozzi  
1233 W. Shaw Avenue, Suite 102  
Fresno, CA 93711

**John Paul Balazs**  
Law Office of John Balazs  
916 2nd Street, Suite F  
Sacramento, CA 95814

**Robert Lee Forkner**  
Law Offices of Robert L. Forkner  
722 Thirteenth Street  
Modesto, CA 95354

**Richard B Mazer**  
Law Offices of Richard B. Mazer  
99 Divisadero Street  
San Francisco, CA 94015

**Michael Joseph McGinnis**  
Law Offices of Michael J. McGinnis  
1713 Tulare, Suite 110  
Fresno, CA 93721

**Jai M. Gohel**  
Law Office of Jai M. Gohel  
819 Eddy Street  
San Francisco, CA 94109

**Richard P. Pointer**  
Hinkle, Jachimowicz, Pointer & Emanuel  
2007 W. Hedding Street #100  
San Jose, CA 95128

**Carl M. Faller**  
Attorney at Law  
Post Office Box 912  
Fresno, CA 93714



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wiretap

Search

## Search Results

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This Special Agent's difficulties with the ATF began in the final years of his career. It is his experience that his supervisors are treating him differently than younger agents and are ignoring his accomplishments. Agent has had an outstanding record in terms of fire investigation and arson convictions in the San Francisco Field Division that is unmatched. It is clear that the disparity is because he is the most senior Certified Fire Investigator and rapidly approaching retirement age. The Agent was not treated in this manner by ATF management until he neared retirement age and believes managements discriminatory actions toward him were motivated by his age and his unwillingness to follow blindly and acquiesce to apathetic managers.

As a result of the Agents solving a previously investigated large theft of explosives, he obtained permission from his RAC and ASAC to teach at the International Association of Arson Investigators annual conference in British Columbia. The Agent also sought and received permission to take three weeks of annual leave in April 2007. In mid to late March however, he was told by his RAC that he needed to spend days sitting on the wiretap in April and May. The Agent explained that he had already received permission from the RAC to be gone during that time and reminded him that in May when the Agent returned, he would be in a trial of a serial arsonist in Redding, CA. The Agent suggested that the RAC find agents that did not have a lot of cases or activities already scheduled. As it turned out, the serial arsonist that the Agent had investigated and was helping to prosecute for setting numerous fires in Redding, California causing several million dollars of damage, pled guilty in the first few days of his scheduled trial and was sentenced to 13 years in prison.

In March of 2007, the largest fire in Sacramento history occurred with losses estimated at \$400 million. The agent opened a preliminary investigation into the origin and cause of the fire and within about a month of the fire, the Sacramento Fire Department investigators contacted the agent requesting assistance in following up certain leads related to a possible suspect. The Agent advised the RAC and expanded the federal investigation. In May 2007, based on the agents work and the work of the Sacramento Fire Department, a suspect was

identified and arrested. Charges were filed against him and he was indicted in federal court on several counts. ATF management, including the ASAC and the SAC, showed virtually no interest in the case although they were kept fully apprised of its progress. The SFFD management staff were only concerned at the time with a overzealous high profile and media opportunity involving a marginal investigation related to cloak and dagger charges. The US Attorney's office was far more enthused about pursuing the major arson case.

In June and July 2007, the Agent helped prepare for and assisted in Sacramento at the trial of a man on federal arson and fraud charges. This took the Agent away from home for approximately four weeks. In mid-July, the man was convicted in trial of all counts against him. As per protocol, I notified my managers of the successful prosecution and once again, the interest shown in the success of the case was almost non-existent.

Two days after the conclusion of the arson trial, the agent received an e-mail message from the RAC of the Stockton ATF office advising him that the agent had been assigned to a wiretap in Stockton, California to commence three days later and lasting five weeks. At the time, the agent was still in the Sacramento area and had not had a chance to return to his home. The agent called the RAC and asked him why he was being advised of this assignment by e-mail rather than through the courtesy of a phone call and why, as it turned out, he was being assigned for more shifts than any other agent in the Division, including every agent from the Stockton office. The agent was understandably upset. He told the RAC that he had not been home for four weeks, that his son was home from college and that the agent had not been able to visit with him. With this new assignment, he would not be able to see him for the remainder of the summer except for possibly one or two weekends. The RAC advised the Agent he had no choice and that the ASAC had told him to assign me to all the shifts.

The Agent contacted his RAC and told him he was upset about the assignment and the way it was handled. The agent asked why he was being assigned to this case longer than any other agent when he was in the middle of investigating the largest fire in Sacramento history. The RAC offered no explanation other than the direction came from "the Division" meaning either the SAC or ASAC. The agent later spoke with both RACs in person and stated that he wanted to speak with either the ASAC or SAC about it since the ASAC was being blamed for the assignment. The agent was told by his RAC that if the Agent pushed the issue and tried to talk to them, "There would be consequences." The agent asked why agents with less seniority were assigned less than shifts than he was. The agent told the RAC that junior agents with lesser cases could be assigned instead of pulling him completely away from the biggest fire loss in Sacramento history. No one ever explained why the senior CFI had to pull more shifts than any other agent. The agent advised the RAC that ATF headquarters had already scheduled him for a week of mandatory CFI training during his scheduled shifts. That same week the ASAC advised Headquarters that the Agent could not attend the mandatory training because of "operational necessities". Meanwhile, the other two junior CFIs were allowed to attend the training.

On April 16, 2008, after another act of discrimination by my supervisors within hours of my notifying them of my retirement plans, I was told they were refusing to allow me to take earned annual leave in July, even though I had requested the leave in February or early March 2008, and stated it was due to operational demands. I soon learned that not only had the operation for which I had been denied leave been approved, but that permission had not even been sought from the top two levels of review. As a result of this continuing pattern of discrimination and of unequal treatment against me, I filed for EEO protections from further age discrimination by the supervisory staff in my chain of command in the San Francisco Field Division.

Posted by webmaster under [Case Studies](#)

The following list of abusive personnel actions stemmed from the Agent challenging outside agencies attempt to undermine a significant and sensitive ATF investigation. ATF management was made aware of actions taken unethically and covertly behind ATFs back that not only placed ATF undercover Agents in extreme danger of compromise, their acts also pursued illegal wiretaps predicated on misleading and false information. The investigation became a witch hunt for local authorities as opposed to an above board criminal investigation. In the interest of political correctness and lack of decisiveness, SFFD managers were prepared to abandon ATF jurisdiction, crumble to ethical standards of the Agency and scapegoat their own Agent. The destructive intent of field management became clear when prior to any of the following actions against the Agent, the telephone call was made threatening the Agent with re-assignment to Fargo, N.D. as a TOO. The subsequent actions include but are not limited to: 5 transfers in 16 months, an EAP referral because the agency could not justify a psyche evaluation (sworn testimony to this effect), 3 reprimands, a suspension, a 6-12 month detail when volunteers existed, and a termination. This all after an EFS mid year a month prior to the Agent taking his stand. NOTE: NONE of the above adverse actions or sanctions attempted were successful.

Comments Off

Posted by webmaster under [Supporting Documents](#)

**Re: To Be Viewed By The Addressees Only - Important / Urgent**

Mr. Carter and Mr. Hoover,

I have received information that will likely be very embarrassing to ATF. I am writing to give you a heads up. This matter appears to be taking on a life of its own.

My dispute with our agency is no secret but I never stopped being an ATF Agent or supporting ATF. That is why I am writing you.

Briefly, a Stanislaus County investigator and Sheriff's Department Sergeant have been removed from duty and/or their assignment to the Gang Intelligence team. The **investigator** is rumored to be under indictment. The indictment is reportedly based on allegations of the supervisor leaking confidential information to a suspect/defendant.

This is the compromise to ATF: The Officers and I were involved in an investigation of \*\*\*\*\* . \*\*\*\*\* is a retired Sheriff's Lieutenant who has close ties and believed to have become a member of the Hells Angels. \*\*\*\*\* was a long-standing target of investigation for the Stanislaus Sheriff's Office.

During the \*\*\*\*\* investigation the Officers independently decided that they were going to initiate a Federal wiretap of \*\*\*\*\* . This technique was premature, unethical and illegal. As you know the justification for a wiretap is extensive. The Sheriff's officers openly as well as secreted from ATF, stated that they intended to circumvent the application process. They intended to lie about failed investigative techniques that had allegedly been exhausted to justify the tap.

At this time ATF investigation of \*\*\*\*\* was progressing well. As the ATF case agent I had two ATF Agents undercover on the case who had quickly managed to gain direct first-hand access to \*\*\*\*\* and many of his associates. I have recorded conversations that display the criminal nature and intent of \*\*\*\*\*.

I opposed the wiretap plan from both investigative and ethical positions. From an ethical perspective I advised both the Officers and others on our task force that I would not support or turn a blind eye to their desire to take a shortcut to a wiretap. Again, it was premature and, at this stage, illegal.

Our disagreements on this topic became heated. I aggressively stood my ground for ATF, for my investigation and for my own integrity. I believed that I was serving as a champion for all of those causes. I have documentation from Assistant United States Attorney Laurel Montoya to this effect.

Seeing that I was the lone obstacle to their wiretap plan the Officers made an 'end run' to have me removed from the case. They contacted my San Francisco supervisors and advised them that I was not a team player, that I was disruptive, selfish, a hindrance to the progress of the case, etc.

The ATF supervisors accepted the bad mouthing of me and removed me from the investigation. I advised my supervisors what the motivation of the Officers was in having me removed (illegal wiretap). My supervisors decided to back the now alleged corrupt officers and removed me from the case. With my dismissal the ATF undercover element was lost.

Now, without any opposition the Officers had cleared their way to obtain a Federal wiretap with the help of the FBI and U.S. Attorneys Office. The Officers committed perjury in their application affidavit for the tap.

The wiretap investigation led to a RICO indictment against \*\*\*\*\* and 11 others.

The point of this message is that I documented my opposition to the Officers and the wiretap. I made my position known to many inside and outside of ATF.

With the anticipated indictment against the District Attorneys Chief of Investigations, RICO case against \*\*\*\*\* will likely be dismissed as the evidence was gained through illegal methods and means.

The FBI and U.S. Attorney's Office are going to be left in a humiliated position. The word is already on the street that ATF was aware of the compromise and did nothing to protect the government against it (which sadly is true).

It is widely known that I had stated and documented that the wiretap plan was illegal when it was first being discussed.

ATF SF supervisors essentially backed the fraudulent plan of these State/Local Supervisors and unethical Officers over their own agent.

There have been attempts to contact me by \*\*\*\*\*'s defense attorneys. They apparently have become aware of the true story.

I need some guidance from you on how I should proceed. I will always tell the truth but, this situation has the potential to be humiliating to ATF since our supervisors chose to take the

side of dirty cops and burned down the lone agent who was willing to stand up to their corruption.

Whether or not you have the ability or desire to 'do the right thing' in this matter and help protect ATF (and thus protect me) I do not know but, I have an overwhelming sense of vindication that the truth is finally being exposed and the original stance that I took which has caused me so much conflict was the right one.

This is not the point of my message but I believe it is now worth stating. My ATF supervisors with the assistance of ATF Counsel, used fraudulent and malicious slander against me from persons now allegedly under indictment for criminal violations, law enforcement ethics violations and known to be completely lacking in credibility to destroy my reputation, finances and career.

This ex-post facto exoneration does not compensate me, my reputation, my career or the suffering my family has endured for 3 years. The truth has been known all along by the ATF managers and counsel involved, but the compelling need to "win" at all cost outweighed the sometimes difficult decision to "do the right thing".

Sincerely,

\*\*\*\*\*

Comments Off

Posted by webmaster under [ATF Hall of Shame](#)

#### **EXECUTIVE SUMMARY:**

**It should be noted that in every case, the employees referenced made every good faith attempt, sometimes far beyond the mere reasonable, to resolve their grievances informally and at the lowest possible level. Every representation herein contained is supported by memoranda, court documents, sworn depositions and internal written communications.**

It is an unfortunate but undeniable fact that ATF managers at all levels, along with the legal counsel, Internal Affairs staff and other personnel they control, have:

- Systematically given false, misleading and perjured testimony to Congressional bodies, federal "watchdog" and other official investigating agencies, and within numerous judicial proceedings;
- Concealed widespread waste, fraud and other unlawful conduct;
- Overtly abused their lawful powers by improperly using government resources for purposes not authorized or even expressly prohibited by federal statutes, regulations and Bureau policy.
- Repeatedly engaged in a longstanding pattern of unlawful reprisal, retaliation and discrimination against not only their own employees, but even private citizens.
- Routinely escaped any rightful accountability for intentionally harmful and illegal conduct. Senior managers that have already been proven by outside investigatory tribunals to have engaged in flagrantly illegal acts of discrimination or retaliation, have

received no disciplinary action whatsoever. In many cases, they have even been promoted or otherwise rewarded.

The aforementioned, both individually and collectively, constitute substantial violations of the following controlling authorities:

- The United States Constitution;
- The Civil Rights Act of 1964 (as amended);
- The Notification and Federal Employee Anti-Discrimination Act of 2001 ("No FEAR Act");
- Various "Whistleblower" protection statutes;
- Various EEOC protections;
- Mandatory Office of Personnel Management (OPM) policies
- Mandatory Department of Justice policies;
- Mandatory BATFE policies;

The following are examples of the commonplace acts and practices that have motivated this initiative:

- Multiple official findings of discriminatory conduct senior ATF managers that have gone completely undisciplined, or were addressed in a manner inconsistent with the standards applied to the line agents and employees.
- False documents and testimony submitted by, or ignored/supported by ATF Chief Counsel's office to include falsification of evidence and perjury.
- Failure or refusal to comply with the Open Records Act and lawful court-ordered demands for documents and testimony.
- Refusal by ATF Chief Counsel's office to provide truthful, factual information and advice to the Executive staff, thereby necessitating costly, wasteful litigation for employees and settlements for the Bureau.
- Consistent failure or refusal by ATF counsel to report significant violations of policy and law by ATF managers to appropriate authorities (e.g. OPSRO, OIG, etc.), thereby perpetuating unlawful practices.
- Unlawful and unethical use of ATF Internal Affairs (IA) to conceal unethical and criminal conduct by management at all levels. Contrary to Bureau policy, IA routinely refuses to open investigations when senior management officials might be implicated, even when the allegations are clearly corroborated by documented evidence. In rare instances in which an investigation is initiated, IA conducts only the most cursory examination and proactively ignores any evidence that might reflect poorly upon management officials. Overt obstruction of justice and material perjury by senior ATF managers are studiously ignored or "swept under the rug".
- On the other hand, ATF management often directs Internal Affairs to conduct hyper-aggressive, punitive investigations targeted at any employees that dare to file informal complaints, internal grievances, EEOC complaints, or otherwise "step out-of-line" in any manner (as viewed by ATF management).

- ATF OPSRO likewise fails or refuses to conduct transparent or thorough investigations for the purpose of covering up gross mismanagement or abuse of authority by senior managers.
- OIG findings, sworn interview and evidence that clearly warrant significant discipline against management officials is commonly suppressed, withheld and even destroyed.
- ATF's Chief Counsel's Office, Internal Affairs, ELRB and senior management routinely facilitate the prompt but unscheduled retirement of managers who are known to have committed significant violations of policy or law. This is done for the sole purpose of shielding them from having to either commit perjury, or give sworn testimony that would be devastating to the Agency.
- ATF's EEOC Directorate blatantly and willfully disregards statutory timelines (often in excess of 300 days), creates artificial delays within the process, and forces unnecessary litigation and massive expenses upon complainants. This, as intended, causes a Bureau-wide chilling effect on any other potential complainants.
- With direct support and guidance from Chief Counsel's Office, the ATF and its EEOC office falsely deny the existence of important evidence until it has been proven to exist by the complainants. Management witnesses are thoroughly interviewed while witnesses identified by the Complainant are ignored, intimidated or otherwise suppressed.
- Reports of Investigation involving legitimate complaints are often deliberately suppressed or improperly documented.
- A 19-year veteran Special Agent made a good-faith inquiry to the agency regarding worker's compensation. ATF instead forced her to retire on disability. Through highly unethical and deceptive tactics including improper use of the Bureau's chaplaincy program, ATF falsely informed the employee that the "Department of Justice would not allow ATF to return her to work". The agency intentionally discriminated against this Special Agent by denying her the opportunity to remain on paid administrative leave as authorized by DOJ policy, pending final resolution of a baseless criminal investigation. However, other employees under similar circumstances both before and afterwards were allowed to remain on paid administrative leave. The agency further interfered with the Special Agent's rights by providing materially false and inaccurate information to OWCP, and obstructed justice by providing materially false information about her case to the Deputy Director.
- Multiple violations related to the handling of validated physical threats by criminals against Special Agents have resulted in extremely expensive and unnecessary litigation at taxpayer's expense. In these instances, the Bureau's documented history of retroactively attempting to destroy the agent's reputation and discredit honorable service were employed through Chief counsel, Personnel Office and Internal Affairs. Attempts to smear outstanding professional contributions and vicious psychological attacks have also been employed. Multiple punitive transfers to create unjustified hardship for agents who dare to complain, have splintered families, caused health complications and wrought financial devastation. In supervisory training courses, ATF Counsel has openly advocated such strategies as an effective way to control employees and discourage complaints.
- In many cases, ATF management has knowingly failed or refused to act, acted in bad faith, or ignored mandatory policies and safety procedures. Whenever threatened agents challenge management, a campaign of personal and professional attacks is invariably launched in order to discredit the complainant. In most cases, no negative documentation of any kind existed prior to the complaints. The devastation to the families is undeniable. The involved Special Agent-in-Charge often ensures that no ATF assets are directed at investigating or protecting a threatened Agent's family. Management has even resorted to

thinly-veiled and completely unfounded attempts to name an agent as a "suspect" in pure reprisal for his prior, statutorily-protected "whistleblower" activity.

- Perceived and actual "whistleblower" complainants have suffered withering attacks based on every possible administrative or other fabricated basis. Perceived whistleblowers are denied access to any of the Bureau's mandatory internal remedy processes, resulting in lengthy, expensive and extremely damaging litigation. ATF Chief Counsel's Office has been directly implicated in the providing fabricated representations to Congressman and Administrative Courts. The assigned attorney was quickly and quietly transferred to another agency to make it difficult for him or his supervisors to be held accountable.
- ATF's Counsel's Office, ELRB and HR resources regularly act in concert to attack and destroy Agents that complain for the specific purpose of deterring others who might consider acting against legitimate whistleblower or discrimination practices. Letters challenging mental and emotional stability are common practice. Low evaluations and letters of reprimand not consistent with Bureau practices are used. The agency pursues Psyche evaluations and forced 20 reassignments, unjustified integrity investigations which would normally amount to nothing more than a local management issue if the agent had not been a complainant.
- ATF has repeatedly provided misleading or overtly false testimony in response to Congressional inquiries.
- Even ATF's second-highest management official, Deputy Director Edgar Domenech, filed a whistleblower complaint citing the Bureau propensity for unlawful reprisal against its own, knowing full well that such actions were tantamount to "career suicide".
- In a recent case, an ATF Special Agent with an exemplary record of 20+ years of undercover service, questioned the use of blatantly unlawful wiretaps during an investigation. After his concerns were brushed aside, the agent brought the violations to his supervisor's attention. Over the next year and a half, the Agent and his family were inexplicably transferred no less than 5 times. He was suspended for 3 days, ordered to undergo a psyche evaluation, received 2 letters of reprimand, and ultimately terminated from employment. Protracted litigation ensued, ensuring a much more costly settlement and further waste of taxpayer funds. During the lawsuit, documents requested more than twelve months prior to hearing dates were suddenly turned over by ATF just days before the Plaintiff's response was due, after ATF Counsel had repeatedly (and falsely) denied their existence. In the end, the agent was quietly reinstated as soon as numerous unlawful and unethical practices were uncovered during sworn testimony. It should be noted that not a single significant act of misconduct by this agent had been documented during his entire previous 20+ years of decorated service, until the very night that his complaint was filed with ATF management.
- The Government Mobility Agreement commonly used by ATF in violation of law as a way to punish agents without due process and in most instances, without any reasonable justification. Complainants that challenge unethical or illegal acts by ATF managers are literally threatened with collecting their next paycheck in Fargo, North Dakota or Anchorage, Alaska. This violates the reprisal laws, the "No Fear Act", and the intent of the "good of the Bureau" polices relating to the involuntary relocation of agents. This practice also results in hundreds of thousands of dollars in unnecessary expenditures wasted on purely retaliatory transfers.
- Involuntary assignment to unfavorable positions and job duties is another common management reprisal weapon used to push senior agents into resignation or retirement, and to force compliance by junior agents. Field Division Operations Officers are essential to the conduct of ATF's mission. Nevertheless, management often reassigns individuals who have made complaints to these positions in order otherwise happy and productive senior agents to retire.

- Agents are regularly subjected to gross disparities in scrutiny or surveillance of their performance or work product if they file Whistleblower complaints, grievances or discrimination complaints.
- Internal Affairs is regularly used by ATF to generate “credibility issues” against complainants while ignoring the substantive whistleblower complaints that originally initiated internal affairs involvement. In a recent case, an anonymous letter was sent to the Department of Justice OIG from Las Vegas, Nevada alleging government fraud, waste and abuse. The OIG provided the letter to ATF Internal Affairs so that they could investigate the allegations. However, the primary focus of the IA investigation was to identify the author of the letter. Once ATF identified an Agent that they suspected to be the “whistleblower”, he was immediately targeted with vindictive personnel actions ranging from a Letter of Reprimand, to a Notice of Proposed Removal from Federal Service. Eventually, the actual author could not stand the unfair reprisals against his colleague, and came forward. ATF management immediately shifted their attacks to the new target and eventually terminated him from Federal service. He was later reinstated after appealing the removal to the MSPB. Another agent who, in response to a lawful demand for documents, unknowingly provided evidence corroborating the unfairly fired agent’s allegations, also became the target of brutal reprisals by ATF management.
- ATF’s Wireless Communication Section (WCS) routinely discriminates against its older Telecommunication Specialists by subjecting them to a hostile work environment. In one case, a Telecomm Specialist with a Masters Degree in Electrical Engineering and an exemplary record of employment was unjustly fired for alleged “technical incompetence”. Another Specialist in his sixties with deteriorated knee joints was deliberately forced by management to attend a radio tower climbing school, in order to (successfully) force him into retirement. On several occasions, specialists’ assignments have been deliberately altered so as to create improper hardship and expedite retirement against the will of the employee.
- In addition to unwarranted disciplinary actions and punitive transfers, unsatisfactory annual performance evaluations are arbitrarily used to control and retaliate against employees. Many current Telecomm Specialists transferred to ATF from other agencies under the “Pay Demo” system to achieve the equivalent of a GS-14 salary, and are among the best and brightest in the field. Unfortunately, ATF’s WCS management lacks basic leadership skills and instead relies on coercive acts and a hostile work environment to “manage” these valuable assets.
- Numerous officially substantiated allegations against senior managers have gone entirely uninvestigated. One top ATF manager was alleged to have ignored ATF policy and procedure regarding massive amounts of missing government property, and to have certified documents he knew to be false in order to conceal these acts. Another senior manager participated in the concealment of the intentional destruction of a Special Agent’s badges in an act of reprisal. He conspired to conceal and failed to report an act of willful and wanton destruction of sensitive government property. Both of these managers remain in the SES program. Senior executive staff members have been directly advised of such abuses and are unwilling or incapable of making the necessary policy changes to prevent ongoing misconduct.
- ATF intentionally ignores EEO laws, procedures and practices. Although the law requires discrimination investigations to be addressed within no more than 180 days, ATF’s average investigation time exceeds 300 days. ATF counsel engages in unethical measures to delay and frustrate the process at every turn. These active measures are used in conjunction with malicious and illegal acts of reprisal designed to induce the employee to drop the complaint.

- In BATFE, Whistleblower and discrimination complaints have become synonymous with career suicide, as stated publicly by former Assistant Director, Edgar Domenech in his whistleblower complaint. Even the second most powerful man in ATF felt compelled to author anonymous letters out of fear for his career.
- Senior ATF managers are excused from testifying at hearings, depositions or any other personnel action without ATF counsel present. Management statements are carefully reviewed by Chief Counsel's Office before they submission to internal or external investigators. "Attorney Client" privilege is most often invoked to protect the individual managers, not the Agency.
- Managers are thoroughly prepped and their testimony carefully crafted by ATF Counsel to attempt to conceal or minimize any evidence of wrongdoing. In one case, a SES manager being groomed for a Special Agent-in-Charge position, stated, "I don't know", or "I don't recall" over 100 times during a single sworn deposition. These non-responses were related to direct questions about actions he was personally responsible for, or policies he relied upon to defend his actions against a particular employee. Why would person be elevated to such an important management level if he "cannot recall" or "does not know" basic ATF policies?
- ATF clearly does not recognize just how egregiously wasteful and deeply harmful their ignoring and punishing of legitimate employee concerns really is to the agency's own interests. Multiple Whistleblower and discrimination complaints that could easily have been resolved at a very low level have needlessly escalated to full-blown court battles due solely to the Bureau's almost pathological institutional refusal to acknowledge, let alone effectively address significant errors, abuses, and acts of grotesquely unlawful or unethical conduct on the part of its leadership.
- ATF counsel's office aggressively resists mediation or alternative dispute resolution procedures under the false assumption that their good faith participation might result in a flood of complaints. ATF has irresponsibly expended millions of dollars in damages, court costs, attorney fees, travel funds, and wasted man-hours in misguided attempts to ignore complaints that could have been handled with a hand shake. This reckless and destructive behavior is perpetuated with almost total impunity and without fear of legitimate oversight or intervention.
- On the other hand, the founders of this initiative will happily testify before Congress or meet with ATF's Director without the benefit of counsel and will not invoke their right to the attorney client privilege if the agency heads will do the same.

Moreover, the aforementioned facts and circumstances represent only a generalized synopsis of some of the most egregious and recent abuses of authority. However, the roster of Agents, Inspectors and clerical staff that are willing to provide documents and sworn testimony chronicling the inexcusable violations of public trust herein asserted is far larger than ATF management might suspect.

Beyond the obvious violations of law and regulation, this almost surreal institutional pattern of intimidation, coercion, fear, mistrust, and profound lack of accountable transparency, is substantially degrading ATF's capability to effectively perform its operational and strategic duties as a federal law agency.

There are many dedicated and professional managers within ATF who have attempted to act ethically and professionally, however, they are just as likely to suffer the same abuse as the field agents for doing so. Supervisors are transferred to ATF Headquarters, demoted, or their successful careers impeded at the hands of vindictive senior managers. It is unconscionable that dedicated, courageous Agents and Supervisors should be governed by such a hostile and pervasive institutional mandate of fear and mistrust.

We, the communicators of this plea for a restoration of sanity, integrity and accountability to BATFE, act with the clear knowledge we will almost certainly suffer further acts of severe reprisal and devastation to our careers. We do so not simply to frivolously defame or discredit the Bureau (which would be entirely redundant), but to signal that it is long past time for ATF to redirect its resources towards truly making America safer by renouncing its long history of subordinating its critical public safety mission to the arbitrary whims and personal interests of its senior managers.

ADD COMMENTS

Posted by webmaster under [Supporting Documents](#)

Hi \*\*\*\*\*,

I'll go over a few items below for clarification as well as trying to add to what I told you last week. If you don't mind, I'm just going to put info in 'bullet' format because I'm short on time and at least this could get you started. Feel free to call if you need any clarification. I know it's long in places but there are several incidents in the past 12 months especially that have been. There also may be some typos or grammatical problems, but I wanted to get a draft to you early since I'm flying out first thing Monday for work.

- I started with ATF on Aug 1, 1988. I am retiring on July 31, 2008. In addition I served 10 years as a US Coast Guard officer and graduate of the US Coast Guard Academy.
- I began working in the ATF Certified Fire Investigator program in 1991 and have specialized in that area since.
- In 1998 I was awarded the ATF Special Agent of the Year award for the entire country based upon work I'd done on a couple of arson homicide cases.
- I have also earned numerous other awards including the Treasury Secretary award around 1990 or 1991.

My difficulties with ATF began in the past 1-2 years. The first major problem occurred in 2007. The following relates to the background of that issue. In around Feb 2007, I obtained permission from my first and second line supervisors, R. Graham Barlow and Michael Gleysteen respectively, to teach at the Int'l Association of Arson Investigators annual conference in British Columbia. I also sought and received permission to take three weeks of annual leave in April 2007. During April, the Sacramento office conducted a wiretap investigation. I was told by Barlowe in mid-late March that I needed to spend days sitting on the wiretap. I explained, with much frustration, that I had already received permission from him to be gone during that time and reminded him that in May when I returned, I would be in a trial of a serial arsonist in Redding, CA. I suggested he find some new agents that did not have a lot of cases or activities already scheduled. Barlowe seemed upset with me for not "pulling my weight" and helping out in Sacramento. As it turned out, the serial arsonist I was helping to prosecute pled guilty in the first few days of his scheduled trial and was sentenced to 13 years in prison.

Also, in late 2006, I opened an investigation into the April 2002 theft of about 750 lbs of high explosives in Northern California. The case had previously been investigated by two agents and closed on two occasions when they could not solve it. In the first three months of 2007, I spent many hours investigating this same crime and eventually identified the thief and the people that ultimately received the explosives. Two weeks before the statute of limitations ran on the theft, I was able to assist the US Attorney to indict the defendant. The response I

received from my supervisors for this work was lukewarm at best. They acted as if this was mediocre work.

In June and early July 2007, I worked full time helping prepare for and try a man in federal court for arson and fraud charges in an arson-for-profit scheme in Sacramento. Doing so, I spent approximately four weeks away from my home in far northern California. The man was convicted by a jury and received the longest sentence ever handed down in the Eastern District of California for a single arson-for-profit incident. Again, the response from my supervisors for having completed a successful investigation and prosecution was almost non-existent.

On around March 15, 2007, the largest fire loss in Sacramento history occurred when a Union Pacific railroad trestle was burned in an arson fire. The eventual financial loss was estimated at \$400 million. Within about a month of the fire, the Sacramento Fire Department received information that implicated an unidentified illegal alien in the arson fire. The man reportedly confessed to associates that he had set the fire. The Sacramento FD investigators contacted me and I expanded the federal investigation. I began efforts to identify the individual thought to be responsible. During May 2007, the man was finally identified and arrested. He provided a false name and other information when I interviewed him about the arson. I filed charges against him and he was indicted in federal court on several counts. ATF management showed virtually no interest in the case although I kept Barlowe fully apprised of its progress. The US Attorney's office was enthused about pursuing it.

We received information that there was at least one other person who could corroborate the suspect's reported confession. I advised Barlowe that as soon as the arson for profit trial was over, that I would be following up on locating the witness so that the railroad trestle arson investigation might be perfected. I expected to spend several weeks trying to locate and persuade the supposed witness to cooperate with the government.

Two days after the conclusion of the arson trial, I received an e-mail message from Dennis Downs, the supervisor of the Stockton ATF office advising me that I had been assigned to a wiretap in Stockton, California to commence three days later and lasting five weeks. At the time I was in the Sacramento area. I called Downs and asked him why I was being advised of this assignment by e-mail rather than a phone call and why, as it turned out, I was being assigned for more shifts than any other agent in the Division, including every agent from the Stockton office. I was quite upset. I told Downs that I had not been home for four weeks, my son was home for college and I had not been able to visit with him. With this new assignment, I would not be able to see him for the remainder of the summer except for possibly one or two weekends. Downs advised me he had no choice and that ASAC Gleysteen told him to assign me to all the shifts.

I called Barlowe and told him I was mad about the assignment and the way it was handled. I asked why I was being assigned to this case longer than any other agent when I was in the middle of investigating the largest fire in Sacramento history. He had no explanation other than the direction came from "the Division" meaning either Gleysteen or Martin. I later spoke with Barlowe and Downs in person and said I wanted to speak with either Gleysteen or Martin about it since Gleysteen was being blamed for assigning me. I was told by Barlowe that if I pushed the issue and tried to talk to them, "There would be consequences". I asked why I as a senior agent was being assigned to more shifts than any other agent and was told that I had not "pulled my weight" on the Sacramento wiretap and was thus assigned. I also pointed out that the other two Certified Fire Investigators (CFIs) in the Division, both of whom were junior to me, had been assigned to far fewer shifts (one of the CFIs was given no wiretap shifts) and why junior agents were assigned less than I was. Barlowe said that I was no different than any other agent and would receive no special consideration. No one ever explained why I had to pull more than any other agent. I advised that ATF headquarters had already scheduled

me for a week of mandatory CFI training during my scheduled shifts. That same week Gleysteen advised Headquarters that I could not attend the mandatory training because of "operational necessities". Meanwhile, the other two CFIs were allowed to attend the training.

I also had been scheduled to travel to London to teach a specialty class that I designed for a group of UK fire investigators. Such training has always been one of the "perks" for senior CFIs who have advanced training and knowledge in particular areas. In August, Gleysteen advised Headquarters he had cancelled my travel and instead allowed another junior CFI in my division to go in my place. Gleysteen also attempted to prevent me from giving two other classes, one in Oregon and one in Colorado. Because I had designed the classes and since no one in the country was eligible to teach them, he finally relented when supervisors from Oregon and Colorado made specific requests to him to ask me to make the presentations.

In November 2007, I underwent shoulder surgery and was on leave until late January 2008. As soon as I returned from leave, I advised Barlowe and Gleysteen in writing of several training sessions inside the U.S. for which I was specifically requested as an instructor to give this one-of-a-kind fire science training. I had also been once again asked by another section of arson investigators in the UK to teach a class there in July 2008. In January 2008, I wrote an e-mail to ATF Headquarters and included Barlowe as a "cc" asking for funding for the UK training and included a flyer for the program clearly showing I was on the agenda. Barlowe never responded one way or the other although he did read the message. I also advised him verbally about this request at the Sacramento Field Office on January 18, 2008.

In February 2008, after learning ATF had no funding to send me to London, I was advised by the UK that they would pay for my trip. I submitted an electronic leave request to Barlowe for two weeks off in July 2008 to cover the timeframe so that I would physically not be exhausted by flying to the UK one day, teaching the next, and returning the following day. He failed to respond for several weeks to my request. I specifically stated in the request that if possible, I would like to take the time spent travelling and teaching at the conference as work hours. Having received no response to my leave request by April 1st, I reminded Barlowe of the request by e-mail and asked him to either approve or deny it. He replied that he first had to talk to Special Agent Hauser because she might need my help on an operation that might occur at that time. About ten days later, I still had no response from Barlowe. I saw SA Hauser and asked her if Barlowe had spoken about my leave with her. She said he had not and told me that none of the official requests for the operation had even been submitted to the Department of Justice for approval. She also said that since she knew I'd be retiring in the summer, she was not even planning on my being available for staffing.

On April 14, 2008, I advised RAC Barlowe in writing that I had initiated a retirement action for myself effective 8/31/2008. He read my message. On April 15th I completed my online ethics training for ATF. During the training, I learned that if any employee was to receive payment for travel in relation to job activities, such payments had to first be approved by the ATF Ethics division. Accordingly, I immediately wrote to an ATF attorney advising him that since ATF had no money to pay for my travel to the UK in July to teach, that the UK Chapter of the Int'l Association of Arson Investigators offered to cover my travel cost including a hotel room and airfare. I cc'd RAC Barlowe on that message. The attorney responded promptly and said that my request would likely be approved but that I should submit a letter officially requesting approval. Barlowe then sent me a message asking what the background was on the training and stated I needed SAC approval before anything was set up. This was despite my having advised him at least twice in January 2008 about the same training request to teach in the UK. Later on April 15th, Barlowe called me and said that the Division (Martin and Gleysteen) would not approve me being out of the country for training because of the operational demands of SA Hauser's case. I asked if he had even asked the Division if they'd approve the travel and he said "No, but I know what they'll say". I also advised him that SA Hauser indicated just a few days before that nothing firm had been authorized as related to

the proposed operational action Barlowe claimed he needed me in Sacramento for. He responded that Hauser did not make personnel decisions. This was despite telling me a few weeks before that he could only respond to my leave request after consulting with her. Further, immediately after Barlowe told me this, I checked one more time with the agents involved in the operation and was advised there have still been no affirmative steps made that would authorize or enable any such operation can even take place at any time, let alone in July.

Another instance in which I feel I was being discriminated against because of my age involved my request for funding from the SF Division to attend the Int'l Association of Arson Investigators conference in Denver at the end of April. The other two CFIs in the division also requested funding. We were all denied based on the Division not having money available. Around mid-March, I heard that the two other CFIs had subsequently been approved by the Division and notified by them that funding for their travel was available. No one from the Division ever contacted me about my availability or interest in attending despite my being the senior CFI in the Division. At that point I had not yet filed for retirement later this year.

As I mentioned earlier, I am the senior CFI in the Division. I have never had less than fully satisfactory reviews (including a mid-year review in March 2008 which was "Fully Satisfactory" and most have been Exceeds Fully Satisfactory or Outstanding. In 1998 I was the ATF Special Agent of the Year for the entire country. I have had a record in terms of fire investigation and arson convictions in the SF Division that has been unmatched. I find it extremely difficult to believe that my being treated unequally to this division's other CFIs has anything to do with anything related to my performance. Instead, it seems clear to me that it is because I am the most senior CFI and rapidly approaching retirement age.

I find it quite transparent that the day after I advise Barlowe that I would be retiring, that the latest restrictive step was taken against me. As a result, supervisory decisions by senior staff in this Division have prevented me, twice in one year, from travelling to the UK despite the officials there specifically asking for me to present this one-of-a-kind presentation. This slap in the face was exacerbated when, on one of those occasions, another CFI in this Division was allowed to travel to the very same training program.

Because of this treatment, on April 16, 2008, because of this continued pattern of unequal treatment, I filed for EEO protections from further age discrimination by the supervisory staff in my chain of command in the San Francisco Field Division.

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