

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FILED

DEC 22 2008

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

UNITED STATES OF AMERICA,

v.

THEODORE F. STEVENS,

Defendant.

Criminal No. 08-231 (EGS)

ORDER

On December 19, 2008, the Court held a sealed hearing in this matter to consider the government's (1) motion to file unredacted complaint ex parte and (2) motion to seal redacted complaint and for a protective order. The Court DENIED the motion to file unredacted complaint ex parte and informed the parties that the motion to seal redacted complaint and for a protective order was GRANTED IN PART AND DENIED IN PART. In accordance with the Court's ruling that it would file on the public docket a copy of the complaint with appropriate redactions to protect, to the extent possible, the privacy interests of the individuals named in the complaint, the Court distributed to all counsel, including counsel for the complainant, its proposed redactions and invited objections and suggestions.

Counsel for the complainant and counsel for the government objected to the disclosure of the complainant's identifying information or any identifying information of any individuals

named in the complaint. In addition to identifying information, the government objected to the disclosure of certain law enforcement techniques and sources referenced in the complaint.

The defendant objected to any redactions and stated his position that the ability to use the entire document in a public proceeding is constitutionally mandated and necessary to the defense. Reserving all objections, the defendant specifically objected to (1) the redaction of one individual's name in particular; (2) any redactions to paragraph 1(h); and (3) redactions of the names of members of the law enforcement team that prosecuted the defendant. The defendant also objected to the additional redactions proposed by the government and/or the complainant's counsel.

The Court has considered the proposed redactions and objections and has accepted some, but not all, of the additional redactions proposed by the government and/or the complainant. In addition, consistent with the Court's Memorandum Opinion & Order dated December 19, 2008, the Court has made some additional redactions in an effort to protect the identities of the individuals named in the complaint and to address other arguments raised by the parties and the complainant. On December 20, 2008, at 4:00 p.m., the Court provided counsel for the parties and counsel for the Complainant, a copy of the complaint containing the Court's final redactions and again notified all counsel that

the Court would post the redacted complaint at 4:00 p.m. on December 22, 2008.¹

Pursuant to the sealed hearing held on December 19, 2008, and the Court's Memorandum Opinion & Order dated December 19, 2008, and the Court's sealed Order dated December 20, 2008, it is hereby **ORDERED** that the Clerk of the Court shall post the attached redacted complaint on the public docket in this case.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
December 22, 2008

¹ Despite having had the Court's redactions for nearly 48 hours, the government contacted the Court at 3:00 p.m. on December 22, 2008, an hour before posting, with additional requests for redactions. Four of these requests pertained to information that the Court had intended to redact and inadvertently had not redacted in the copy given to counsel. Two of the inadvertent nonredactions were immediately pointed out to the Court and government counsel by defense counsel on December 22, 2008, without waiving their objections and notwithstanding the defendant's position that no information should be redacted. The Court appreciates defense counsel's diligence and candor. The remaining two requests pertain to an individual's name that was not redacted *by the government* in the government's own proposed redactions. Nevertheless, notwithstanding this eleventh-hour request by the government, and subject to further requests by the defendant to make public additional information, the government's request to redact that name will be reluctantly granted by the Court.

This document contains the identities of FBI Sources, sophisticated techniques, and other sensitive information. This document is sensitive but unclassified.

Background

My name is [REDACTED] and I have been a Special Agent with the FBI since August 2003. My first office was [REDACTED] and I have remained there since [REDACTED]. Soon after arriving in [REDACTED] I was made [REDACTED] agent on a sensitive public corruption case, POLAR PEN [REDACTED]. The [REDACTED] agent was [REDACTED].

POLAR PEN involved the investigation and prosecution of federal and state legislators, lobbyists, and corporate officials. The most recent conviction was of United States Senator Ted Stevens. DOJ Public Integrity Section lead the prosecution team.

Summary of Complaints

As the [REDACTED] agent on POLAR PEN for the past [REDACTED] years, I have witnessed or learned of serious violations of policy, rules, and procedures as well as possible criminal violations. When the problems initially began to surface, I attempted to rectify the problems by addressing them directly with [REDACTED]. My efforts were unsuccessful. My next step was to keep my supervisor aware of all problems/issues that I encountered thereafter. I would also "vent" with [REDACTED] agents that I trusted throughout the years. In addition, on multiple occasions I advised my CDC of some of these issues/problems. Below is a summary of the key areas of concern that I can recall.

Details of Complaints

1. [REDACTED] mishandled [REDACTED] sources
 - a. Overall, [REDACTED] mishandled [REDACTED] sources by becoming too close to each of them. [REDACTED] would meet with sources in [REDACTED] home and have dinner with them and [REDACTED] at [REDACTED] home or their home. [REDACTED] unnecessarily disclosed details about FBI investigations, unnecessarily provided information related to FBI techniques and internal workings, and would accept things of value from sources. [REDACTED] documented very little in FBI files.
 - b. Sources I am aware of mismanagement:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
 - iv. [REDACTED]
 - v. [REDACTED]
 - vi. Bill Allen
 - c. [REDACTED]
 - i. Source was previously in the [REDACTED]
 - ii. [REDACTED] closed the source at some point.
 - iii. Source gave [REDACTED] current job as a [REDACTED] at the [REDACTED]
 - iv. [REDACTED] tried to have me reopen the source as my own source but I refused.
 - d. [REDACTED]

- i. [redacted] met with [redacted] at [redacted] home in [redacted] on multiple occasions.
 - ii. [redacted] had access to [redacted] home, even when [redacted] was not home.
 - iii. [redacted] met with [redacted] and [redacted] on multiple occasions.
- e.
- i. [redacted] told [redacted] details about [redacted] and Allen's cooperation and status as FBI sources.
 - ii. [redacted] told [redacted] virtually all case details when [redacted] did not have a need to know case and operational details.
 - iii. [redacted] met with [redacted] on many occasions alone or with [redacted]
 - iv. [redacted] ate dinner or lunch with [redacted] and [redacted] at [redacted] house on many occasions.
 - v. [redacted] provided [redacted] detailed information about my personal background, [redacted] without my permission and knowing I would not have allowed [redacted] to do so.
 - vi. When [redacted] moved from [redacted] to [redacted] [redacted] utilized [redacted] to locate homes [redacted] was a licensed real estate agent).
 - vii. [redacted] drew and provided [redacted] a large original drawing of [redacted] dog as a gift. This artwork is hanging on a wall in [redacted] home near [redacted] stairs.
- f.
- i. [redacted] attempted to provide [redacted] information about my personal background, [redacted] without my permission. I had to kick [redacted] leg under the table to stop [redacted] from revealing personal information about me.
 - ii. After [redacted] was convicted and sent to prison, [redacted] began communicating with [redacted] in writing without documenting the communications in FBI files.
 - iii. I believe [redacted] lied to [redacted] in my presence on or about 11/20/2008 when [redacted] told [redacted] did not know [redacted] needed to document in FBI files the letters received and sent to [redacted]
- g.
- i. [redacted] went golfing with [redacted] and [redacted] (another individual that was captured on Title III electronic surveillance and was a potential subject).
 - ii. This information was provided by [redacted]
- h. Allen
- i. Most recently, [redacted] met with Allen by [redacted] in [redacted] hotel room in Washington D.C. When I found out that occurred, I told [redacted] that if [redacted] knew that was going to happen again, to advise me so I could stop that from happening again. I also told [redacted] not to do that again. [redacted] ignored me.
 - ii. [redacted] wore [redacted] for Allen during the recent trial during his testimony. [redacted] does not wear [redacted] [redacted] advised it was a surprise/present for Allen.

- iii. [REDACTED] told Allen during the pitch for him to cooperate on or about 08/30/06 that [REDACTED] accepted bribes from the FBI. [REDACTED] told him details of the case and that [REDACTED] had cooperated with the FBI. It was unnecessary to reveal all that information. I believed it was absolutely unnecessary to provide details about other cases to someone we were wanting to cooperate. I advised the other agent in the room and [REDACTED] agreed but did not feel comfortable stopping [REDACTED] from revealing further information.
 - iv. [REDACTED] told Allen [REDACTED] was cooperating and information that [REDACTED] provided to the FBI. [REDACTED] told Allen my source testified before the grand jury. [REDACTED] provided Allen with information [REDACTED] told the FBI.
 - v. [REDACTED] may have revealed to Allen and/or his attorney the status of an ongoing Anchorage Police Department investigation involving Allen [REDACTED]
2. [REDACTED] accepted multiple things of value from sources
 - a. As referenced above, I am aware of a drawing/artwork, house-hunting assistance, and employment for [REDACTED]. I believe there were more gifts that I do not know about.
 3. [REDACTED] may have violated 6E Grand Jury rules
 - a. As referenced above, I believe [REDACTED] may have violated grand jury rules when [REDACTED] admitted to me that [REDACTED] told Allen that my source testified before the grand jury. I learned of this because Allen passed on the information to a family member, who passed on the information to my source's [REDACTED] who passed it on to my source. [REDACTED] was upset that Allen knew he testified. I do not recall how much Allen knew about the content of [REDACTED] grand jury testimony.
 4. [REDACTED] failed to enter large amounts of evidence into FBI systems as 1B or 1C evidence
 - a. There is a large amount of records currently in the Squad 4/5 conference room that the FBI has had in it's custody for some time that do not appear to be entered into evidence. [REDACTED] defends [REDACTED] and others by saying the documents are not originals even though much, if not all of the evidence, was obtained via grand jury subpoena and must be protected.
 5. [REDACTED] failed to disclose one or more searches performed in a Title III affidavit
 - a. In one of the first Title III affidavits, I discovered that [REDACTED] affidavit did not reference the fact that the FBI had performed one or more searches. I advised [REDACTED] and [REDACTED] told me not to worry about it, that it was too late to change it, and that it was irrelevant and would not have changed the fact the judge signed the affidavit. I was a [REDACTED] and left the issue alone. I don't recall whether I informed anyone else.
 6. [REDACTED] provided a variety of sensitive information and a piece of FBI equipment to [REDACTED]
 - a. I am aware that [REDACTED] keeps [REDACTED] up to date with the details and status of FBI investigations, regardless of the sensitivities involved or rules/regulations/laws that are broken.

- b. After approaching [redacted] and gaining [redacted] cooperation, [redacted] either received or made a call on [redacted] cell phone and began telling the caller everything that transpired in the approach to [redacted] about our techniques used (details like the shock room), what occurred, and the results of our efforts. I assumed it was [redacted] partner from [redacted]. After [redacted] completed the call, I asked if the caller was [redacted]. [redacted] said it was [redacted]. I chastised [redacted] for telling [redacted] sensitive information. [redacted] said, "Who else am I supposed to tell? [redacted] in law enforcement and I have to tell someone..." I told [redacted] I knew [redacted] was not in law enforcement and that [redacted] should not be doing that. From that point on, [redacted] tried to conceal the fact that [redacted] continued to keep [redacted] informed but I knew [redacted] did not change [redacted] habits.
- c. [redacted] transferred from [redacted] to [redacted]. [redacted] had a [redacted] FBI cell phone [redacted] to use when communicating with sensitive sources. One day I attempted to contact [redacted] on [redacted] cover cell phone and [redacted] answered the phone. I asked [redacted] why [redacted] answered [redacted] cell phone and [redacted] advised they did not have a home phone yet so [redacted] decided to lend [redacted] the phone for [redacted] personal use.
7. [redacted] had inappropriate relationships/communication with members of the media.
- a. [redacted] had relationships and communicated with [redacted] and [redacted]. [redacted] had extensive communication with [redacted] about Allen and [redacted] source.
8. [redacted] disclosed sensitive techniques and actions of our technically trained agents to a source.
- a. On one occasion, [redacted] told Allen that our tech agents performed work in his phone box and on his phone line.
9. [redacted] and others intentionally redacted Brady/Jenks material that defense counsel was entitled to receive.
- a. At the recent trial of Ted Stevens, the prosecution was required by the court to turn over redacted FD-302s. [redacted] redacted the Allen FD-302s/FD-1023s. The court learned the prosecution redacted information that should not have been redacted. The court openly chastised the government. Later that day, [redacted] advised me that [redacted] redacted the information and did so because [redacted] wanted the FD-302s [redacted] was redacting to fit the Brady/Giglio letter that had previously been provided to the defense.
- b. [redacted] and others decided not to provide defense counsel Allen's bank account documents. During the trial of Ted Stevens, the prosecution decided to use a check of Allen's as an exhibit even though it had not previously been turned over in discovery. Prosecutors decided not to provide that check to the court and defense before using it as a government exhibit. The defense and the judge were upset.
10. [redacted] may have disclosed the of location and purpose of official travel by [redacted] to a member of the media.
- a. [redacted] knew details of FBI investigations. [redacted] is very outgoing and likes to talk. [redacted] played softball with [redacted]. Shortly after [redacted] flew to [redacted] to [redacted]

make the pitch for [REDACTED] to cooperate, my source advised that [REDACTED] told [REDACTED] a subject of our investigation who did not know [REDACTED] was a subject, that the FBI was going after [REDACTED] I spoke to [REDACTED] and [REDACTED] s initial response was that [REDACTED] plays softball with [REDACTED] and [REDACTED] may have told [REDACTED] Later [REDACTED] told me that [REDACTED] talked to [REDACTED] and [REDACTED] did not say anything to [REDACTED]

11. [REDACTED] DOJ Public Integrity Section, inappropriately created scheme to relocate prosecution witness that was also subpoenaed by defense during trial
 - a. During the trial of Ted Stevens, prosecutors subpoenaed Robert Williams. Williams was brought to Washington D.C. weeks before the trial for multiple trial preparatory sessions. Williams health was very poor. I requested that Williams be the first to testify so he could testify, get home, and continue to receive medical attention as necessary. I did not want him to die while we had him in Washington D.C. After the final preparatory session, which included a mock cross examination, prosecutors decided Williams was not a witness the prosecution wanted to use. [REDACTED] advised [REDACTED] came up with a great plan to send Williams home because [REDACTED] was so "concerned" about Williams' health that it would allow prosecutors to send him back to Alaska, even though Williams was also under a defense subpoena. I advised [REDACTED] and others multiple times that they should advise the defense counsel and the judge before executing their plan. I was ignored. They had me send Williams home. The defense and judge found out, were very angry, and suggested prosecutorial misconduct had occurred.
12. [REDACTED] attempted to conceal from defense counsel an FD-302 discovered that had exculpatory information during trial that had not previously been provided to the defense
 - a. During the trial of Ted Stevens, prosecutors planned to use [REDACTED] as a witness. This caused the discovery of the fact that one of [REDACTED] s FD-302s contained information that was not previously provided to the defense. The judge had previously required prosecutors to turn over all FD-302s and this was one that was not provided. The information had to be turned over to the defense. [REDACTED] was absolutely against turning over the FD-302 trying to convince the group why it was unnecessary. I left the conference room because I felt very uncomfortable with where the discussion was heading. In the end, the FD-302 was turned over.
13. [REDACTED] or [REDACTED] DOJ Public Integrity Section, accepted approximately 30 boxes of paper evidence from defense counsel and did not forward that evidence to FBI to process and enter into databases as 1B or 1C evidence
 - a. When I arrived at Public Integrity Section in Washington D.C. to prepare for the trial of Ted Stevens, I found many boxes of documents stacked outside the office of [REDACTED]. The FBI did not have custody of any of the material and the evidence had not been reviewed by FBI personnel. Because of evidence being in the custody and control of Public Integrity Section, discovery for the case had to occur from both Alaska (evidence in the custody and control of the FBI) and Washington D.C. (evidence in the custody and control of Public Integrity Section attorneys).
14. [REDACTED] or [REDACTED] DOJ Public Integrity Section, accepted original evidence from one

or more witnesses during grand jury and failed to provide that evidence to the FBI to process and enter into databases as 1B evidence and in one instance temporarily lost that evidence

- a. [REDACTED] provided prosecutors with an original gold key-chain [REDACTED] received from Ted Stevens. [REDACTED] provided it during grand jury. During a trial preparatory session with [REDACTED] in Alaska [REDACTED], DOJ Public Integrity Section, instructed me to provide [REDACTED] with an FBI receipt for the key-chain because [REDACTED] advised [REDACTED] wanted to get the key-chain returned to [REDACTED] after the case was completed. I did not provide [REDACTED] with a receipt because that key-chain was never in the custody and control of the FBI. I was previously told that [REDACTED] had lost the key-chain but later found it in a file cabinet within Public Integrity Section.
- b. I saw other original evidence at Public Integrity Section that did not appear to have been entered into FBI evidence systems or reviewed by the FBI.

My Motivation to Further Report

I could have kept going with the status quo but I chose to step up and make my concerns known at a higher level because of multiple reasons:

1. There were many serious problems I encountered in the recent trial of U.S. Senator Ted Stevens that frustrated me and I feel many of them stem from case mismanagement that occurred for too long;
2. One of [REDACTED] wrote and published a book about [REDACTED] work with the FBI, which publicly disclosed the mismanagement of [REDACTED] provided information about our investigations that [REDACTED] should not have known, the book mentioned me in multiple places, and because [REDACTED] and [REDACTED] wrote a letter complaining to the Director of the FBI;
3. [REDACTED] management recently decided to reassign [REDACTED] to others including [REDACTED] and [REDACTED] believed [REDACTED] would continue to have contact and mismanage [REDACTED] causing other agents to be in inappropriate situations as I had been in the past;
4. I was scheduled to contact [REDACTED], a source who was convicted and is currently in prison. I found out [REDACTED] was also in the process of writing a book and I feared more problems would occur and I would be in the middle of [REDACTED] problems again;
5. I recently began sharing my current concerns with two agents and they encouraged me to help everyone on our squad by reporting these problems to rectify the situation for all;
6. My efforts to rectify the problems have not been solved by reporting them to management; and
7. I re-read the FBI's core values and found they have not been upheld in the areas mentioned throughout this document.

Concerns For Myself

[REDACTED] In addition, FBIHQ from PCU to the highest levels are extremely pleased with the successes of POLAR PEN. I am concerned about possible retaliation. On 11/21/2008 I requested whistleblower protection status from my [REDACTED] who was my [REDACTED] at the time. I don't want to be punished for coming forward. I am absolutely

outside my comfort zone by reporting my concerns beyond my efforts I listed in this document. Because my [REDACTED] was a bit unclear as to whether [REDACTED] granted my request for protection, I request any and all whistleblower protections available again.

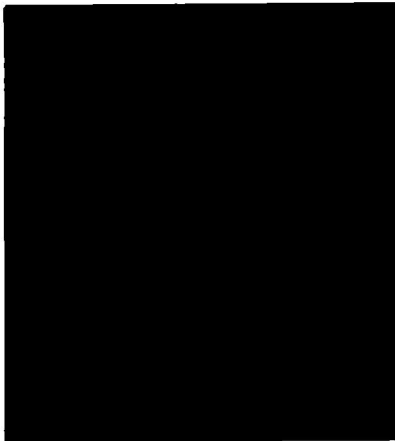
Actions I have Taken

Other than the previously noted actions, I recently discussed my many concerns with two other agents within my office. They helped guide and encourage me to report this information to higher authorities. I made a few more attempts to report these violations within my command structure in [REDACTED]. I was unsuccessful in these attempts. I decided I was more comfortable telling a neutral, outside party about my concerns. One of the agents I spoke with provided me with the hotline number to the Office of Integrity and Compliance (OIC). I called on [REDACTED]. The preamble to the call stated that the hotline was operated by a third party and that if my concerns involved sensitive information, that I should not provide the information to them. I then called OIC directly and spoke with [REDACTED]. [REDACTED] was interested in what I had to say but advised that due to the nature of my concerns, I needed to provide the information to Inspection Division or DOJ OIG. [REDACTED] provided me with the contact information for Inspection Division, Internal Investigation Section. At approximately [REDACTED], I contacted [REDACTED]. [REDACTED] encouraged me to write down my concerns and provide them to [REDACTED] for the [REDACTED] of complaints. I hoped my concerns could be looked into without my name being known as the one who started the mess, to avoid any possible retaliation.

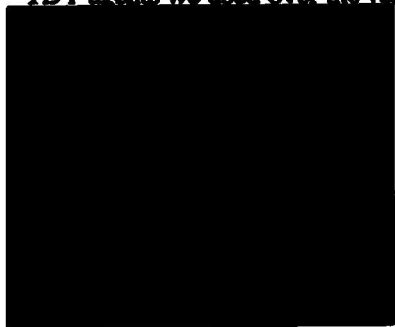
[REDACTED] I found out that one of the agents I spoke with met with [REDACTED] and informed him that someone was going to report these concerns to OPR. When I returned from lunch, [REDACTED] spoke with me in private and told me that to protect myself, I needed to write down everything and provide it to [REDACTED]. [REDACTED] affirmed that I kept [REDACTED] informed of problems in the past but that [REDACTED] had forgotten a lot of what I told him. I felt I had to advise [REDACTED] of my contact earlier that day with [REDACTED] and [REDACTED]. I knew [REDACTED] was going to go talk to the [REDACTED] and advise him of the situation. I told [REDACTED] that I should tell the [REDACTED] my concerns. Shortly thereafter, I was called to the [REDACTED] office and asked to explain my concerns. I requested whistleblower protection and suggested it might not be appropriate for [REDACTED] or the CDC to sit in on this meeting because part of my story included them. [REDACTED] brought [REDACTED] into the office. I advised the [REDACTED] of my contact with [REDACTED] and [REDACTED]. [REDACTED] was not pleased I went outside of my office's chain of command. I explained why I didn't feel comfortable using my office's command structure and how I even got the feeling from [REDACTED] once that made me believe it would not be smart to go to the [REDACTED] with these concerns. [REDACTED] advised me to follow the instructions [REDACTED] had given me but that I should have provided the information to [REDACTED]. [REDACTED] told me not to discuss the concerns with others in the office and if anyone else had concerns they were to provide them to [REDACTED]. [REDACTED] had me immediately retrieve my notes regarding who at HQ I spoke with so [REDACTED] could call them and let them know [REDACTED] was dealing with the situation.

People Who Could Provide Further Information/Corroboration

[REDACTED]



TDY agents we used over the years (probably over 50)



My Contact Information

