

# EXHIBIT “4”

## PRB Submissions

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1 16 January 2003

2 Memorandum For: Melda [ ] C/HRS/FBIS

3 Information: Douglas [ ] Director, FBIS

Subject: Record of Grievance Against FBIS Managers

1. Introduction: I wish to record a grievance against senior managers at FBIS. I allege that certain supervisors continue to judge me not by objective performance but by my "attitude" toward the CIA and by critical opinions that I have allegedly shared with younger officers and/or new EOD's. I shall describe my allegations in the following paragraphs and explain why they are improper. *I request any and all reasonable redress—to include counseling and possible reprimand of the offending officers.*

12 2. Two FBIS officers, in particular Joyce Forrest, C/ENEAG, but to a lesser extent  
14 Michael [ ] C/TNEP, have told me that they "are concerned" by "negative  
17 comments" about CIA that I have allegedly made to unnamed "young officers and new  
EOD's." Despite their "concern" neither Forrest nor [ ] have described to me, nor  
documented in any way, a specific instance where these alleged comments were made.  
Yet, it is clear from one "PAR feedback session" with Forrest and several other  
conversations with [ ] including "PAR signing discussions" that both officers assess  
my well-known critical views of CIA (and in Forrest's case other criteria) as barriers to  
career advancement. Moreover, my alleged views continue to factor prominently into  
their assessment of my performance and were negatively commented on in my most  
recent, December 2002 PAR—despite a complete absence of documentation.

30 3. I contend that taking anyone's privately-held opinion of CIA's general effectiveness  
into account in a performance appraisal report seems contrary to the Agency's policy on  
diversity, is not permitted by any CIA regulation, can be plausibly interpreted (in my  
case) as a form of retaliation against a *whistleblower*, and is a probable violation of one's  
First Amendment rights. I am greatly disappointed that these senior managers seem  
obsessed with controlling personal opinions and an employee's possible sharing of them  
with "young officers." This unprofessional conduct is equally disappointing because it  
subordinates all other contributions that a person may have made to the intelligence  
mission (in my case, very substantial, pioneering contributions), to these managers'  
obsession with an employee's private views and "how to control" them.

38 4. I discovered the phenomenon described above during a revealing PAR feedback  
session with Joyce Forrest on the afternoon of 25 October, at 1500 hours. After a give  
and take criticism, in which Forrest criticized my "poor writing" and my "bad judgment,"  
I detected a previously unknown, yet profound subtext to the conversation. Forrest  
proceeded to make multiple undocumented criticisms, which clearly had played a role in  
her assessment of me—and had been recorded nowhere, hitherto. Among other things,  
Forrest noted that she and [ ] (but especially [ ]) she claimed) were "concerned"  
about my comments to "young officers." Dumbfounded, I joked that perhaps FBIS

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1 should give me a comfortable, private office to keep me from contact with them.”  
Forrest calmly responded, to my great surprise, “actually, we are considering just that.”  
She noted that it was for this reason that I was not allowed “to mentor any young officer.”  
5 When I pointed out to her that I was already mentoring, for all practical purposes, one  
young EOD, Wesley [redacted] and that the results seemed quite positive, she offered no  
comment. She proceeded to make other undocumented observations about my alleged  
behavior, which revealed a level of psychological bias that I have never witnessed before  
in the CIA. She asserted that the reason “FBIS has no video program” was because Ken  
Hughes, the former head of FBIS/CTU, had not been able to call on me to manage the  
12 *Blue View* Web research initiative because Hughes felt that my “attitude towards *Blue*  
*View* was negative.” Consequently, “FBIS managers had to make our video lead, Joe  
[redacted] the *Blue View* manager.” Thus, Forrest continued, “Franz, you the reason FBIS  
does not have a video program.” To this unusual, undocumented (and inane) argument, I  
responded that Ken had never offered the *Blue View* project to me, that he had not spoken  
with me orally (or telepathically), and that, in the event, FBIS managers had inadvertently  
made the correct decision to allow me to continue work on militant Islamic issues, as my  
contributions had been indeed pioneering. Nonetheless, I acknowledged to Forrest  
private doubts about *Blue View*’s efficacy, given my background as one of only two  
20 regular FBIS speakers on Internet exploitation issues, and my taxpayer’s awareness of the  
project’s considerable cost (eight million dollars). I reminded Forrest that it is any  
employee’s right to harbor private reservations about any untested research program—but  
that I had expressed these reservations to no more than 1-2 people, in any case. In one  
final, undocumented assertion, Forrest asserted that I had “driven away” young FBISer’s  
24 like Kevin [redacted]. I vigorously denied this allegation and told Forrest that she clearly  
did not know what she was talking about. I noted that perhaps “bad management” had  
26 played a role in [redacted] departure. The discussion ended inconclusively shortly  
thereafter, having lasted for more than one hour.

28 6. On 12 November, during a 45-minute private conversation with [redacted] I shared with  
him Forrest’s comments, in particular, my alleged “unsuitability” to mentor or speak with  
young officers. Although a bit surprised, he sympathized with my irritation and  
emphasized that he had no problem whatsoever with informal critiques of CIA. He  
requested only that I be positive about the FBIS work at hand—which he acknowledged  
33 had been my practice with young officers such as Wesley [redacted]. He promised to discuss  
the issue with Forrest and reluctantly divulged that it was Forrest who did not believe me  
suitable to mentor young officers.

36 7. However, during two conversations with [redacted] in mid-December 2002 to discuss my  
37 PAR, [redacted] contended that he also had become “concerned” about my interaction with  
young employees, a fact that he recorded in his comments on my PAR. While he  
39 acknowledged my great assistance to officers like [redacted], he said that “he preferred not to  
provide details” to me about my alleged offending remarks.

41 8. As some officers in FBIS are aware, (including [redacted] Hughes, Kelly [redacted] Rich  
42 [redacted] and Gina [redacted]) I am a former whistleblower at the CIA and perhaps enjoy a

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1 deserved reputation for outspokenness. Peers seem to have no problem with this fact—very many routinely ask me for advice—and I get along with everyone in the organization quite well (except for 1-2 managers). Moreover, a handful of other CIA supervisors find my views refreshing. Yet, whatever may be managers' privately held opinion of my critiques of the CIA—the following facts are undeniably true:

6 a. [ ] and Forrest expressed no criticism whatsoever of my outspokenness during the previous PAR period.

8 b. Neither [ ] nor Forrest documented their "concern" in any way; nor do they describe the alleged incident(s) that seem to trouble them. In other words, there is no written record of their reported "concern." *(Comment: But their "concern" most certainly played a role at the 2002 panel and will play another important role at the 2003 panel.)*

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15 c. Forrest and [ ] did not feel strongly enough about their "concern" to contact the Office of Security. If they were so "concerned," they made their views known to no one. Moreover, it seems likely that [ ] did not even discover his "concern" until he was reminded of the need to comment on his "concern" in my December 2002 PAR. *(Comment: Am I required to guess managers' thoughts?)*

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20 d. Neither [ ] nor Forrest allege that I am fundamentally wrong in any criticism of CIA. Neither claims that my alleged comments—whatever they were—lack factual basis. [ ] also acknowledges no problem with criticizing CIA's performance to "mature" employees. *(Comment: Should I ask an employee's age before venturing comments that an overly sensitive manager might construe as "negative?" Are all young employees immature?)*

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25 e. [ ] freely acknowledges that I have been of great service to young EOD's like Wesley [ ]. Both [ ] and Forrest acknowledge that I am above average in initiative and productivity and exceptional in expertise.

27 f. [ ] (and perhaps Forrest) are "concerned" only with my comments to young officers and new EOD's, not to all CIA employees. In other words, I am "unfit" to discuss the Agency at large with only one group—the young.

g. Agency regulation AR 20-16, which governs PAR writing, does not list "political correctness" or "willingness to sing CIA's praises to young officers" as factors that can be considered in a performance appraisal report. Nor were these two factors listed in my 2001 "goals and expectations" statement. *(Comment: Agency practice also does not permit taking into account whether a person smokes. Why? Because smoking is a personal choice. Yet, smoking in front of "young people" could easily be construed as "negative." Therefore, would it be proper to put in a PAR "he smokes and is a bad role model for young people?" Of course not!)*

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h. Agency regulation AR 20-16 states clearly that *evaluation factors for managers* (like Forrest and [redacted]) are, among other things: "Valuing and Managing Diversity" – i.e. . . . the degree to which a manager views *differences* as assets, and utilizes these *differences* to accomplish organizational goals. . . (my italics).

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i. A rarely applied Agency regulation, AR 51-3, actually encourages critical assessments of the Agency's intelligence performance. Conversely, no regulation prohibits a CIA employee from sharing with colleagues his/her private assessment of Agency performance. (*Comment: In view of AR 51-3, why would a manager object when an experienced employee informally critiques CIA's performance in the presence of a less experienced employee?*)

j. The CIA's policy on diversity, first promulgated in February 1999, specifically states that every employee should be treated with "integrity and respect" and that "everyone's voice should be heard." (*Comment: Except mine?*)

k. No employee signs away all aspects of his First Amendment rights when he accepts employment at CIA. I certainly didn't. *Do certain FBIS managers consider it their duty to police their subordinates' informal comments to colleagues? Comments that are unrelated to FBIS' work?*

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l. Based on her lengthy comments on 25 October, it is clear to me that Forrest most certainly did factor in my personal criticisms of the Agency to young officers (and other inane, undocumented criteria) during her "defense" of me at the GS-13 panel in early October 2002. Similarly, [redacted] was critical of my comments to young employees in my recent PAR from mid-December 2002. (*Comment: With overwhelmingly biased "advocates" like Forrest at the panel, who needs enemies? See paragraph 5 above.*)

9. **The Context:** As many people are aware, I am a former whistleblower and I have been quite critical of CIA's intelligence performance, particularly in the run-up to the 9/11 attacks. I do not deny or apologize for this nor do I hesitate to share my opinion with co-workers. (But I do not give seminars!) I have also described to several young employees instances of undeniable corruption at CIA. *What of it?* These days, as everyone is aware, it seems every second congressman is critical of CIA's intelligence performance and two investigatory committees have been established to examine it. So, why is it illegitimate for an experienced CIA officer to privately share opinions voiced by elected officials such as Senator Shelby or Congressman Porter Goss, both of whom have been critical of CIA? (*Whether managers consider my outspokenness "negative behavior" is up to them—but they cannot make it a criterion for advancement. I prefer to describe myself as "critical" of CIA and believe government bureaucracies need such people to offer contrary and constructive criticism. If others refuse or disdain this role, that is their choice.*)

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1 *Incidentally, according to a recent article in Time magazine, the majority of Americans believe that whistleblowers perform a useful role.)*

10 10. It is worth noting that shortly after 9/11, I was sought out by the Denial and Deception Staff of the National Intelligence Council to speculate over possible reasons why CIA had been unable to warn of the attacks. Similarly, I was summoned for a lengthy interview with the US Congress' 9/11 Investigatory Committee headed by Eleanor Hill in late spring 2002. During the interview with Hill's staff, I made a large number of criticisms of the performance of CIA's Directorate of Operations, as I am a former Arabic-speaking case officer with considerable agent-handling experience. During the two-hour meeting, the investigators specifically requested a report that I had written several years ago documenting CIA's inability to predict attacks from one terrorist group. They thanked me for the report and for my observations about how the DO operates. *Why do I relate this?* Because I have made identical comments and observations to young officers like Wesley [redacted] (with no discernable "negative" effect). Therefore, is it proper, wise, or legal for CIA to make this a matter of negative comment in a PAR? Is it proper for a senior manager like Forrest to take such criticisms of CIA into account? Did not George Tenet say that no one would suffer retaliation for speaking his mind to congressional investigators? *If so, how can CIA publicly encourage employee feedback to the 9/11 Investigatory Committee in one venue and how can Congress pass the Whistleblower provision of the 1999 Intelligence Authorization Act—and simultaneously punish the same employee for making identical remarks to young employees in an internal setting? What is going on here?* (Comment: 15 24 26 Wesley [redacted] knows of the existence of my whistleblower action re "M" but has not read the complaint. Does Title Seven prohibit sharing of a whistleblower experience with cleared employees? No, it does not. Are my comments to [redacted] about M the mysterious "negative comments" of which Forrest speaks?)

11. In the event of an unsatisfactory resolution to the matter, I will pursue it with the Office of the Inspector General. It seems to me that there had better be an excellent reason why the only person in FBIS told not to share critical opinions of CIA with young officers—indeed, who is privately considered unsuitable to have contact with them—just happens to be FBIS' only former whistleblower. All a coincidence?

12. The situation described above is unbecoming of a great public institution and demands an explanation. Thank you for your kind attention to this matter.

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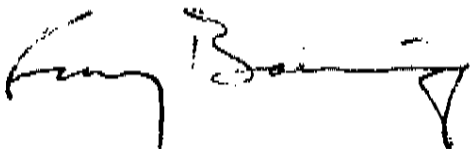
subverts not just the provisions of E.O. 12958 *such as the absolute prohibition against covering up possible crimes through classification* but also my First Amendment rights. (By what sort of un-American, Orwellian logic can CIA make an employee's discussion of overt news items secret?)

**7. Action Requested:** I kindly request that you contact the CIA, including the Office of the Inspector General John Helgerson, to investigate—and if warranted—rectify the situation described above. I delivered an electronic version of this letter to CIA/OIG on 13 December. My right to appeal to the ISCAP is being ignored and CIA is in seeming violation of E.O. 12958. Good faith on the part of CIA—OIG being the likely exception—seems to have evaporated.

**8. Please feel free to email me** \_\_\_\_\_ **and/or call me at my office (703-613-5980) or home** \_\_\_\_\_ **should you desire further information.** For your background, I currently work for the Foreign Broadcast Information Service in Reston, Virginia. At FBIS, I work on militant Islamic issues and related \_\_\_\_\_ topics. I entered on duty with the federal government on October 20, 1980 and my SSN is \_\_\_\_\_

Thank you for your kind attention to this matter, and . . .

Season's Greetings



Franz Boening

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March 24, 2003

**To:** John L. Helgerson, Inspector General, Central Intelligence Agency

**Info:** Buzzy Krongard, Executive Director, Central Intelligence Agency  
Office of General Counsel  
Office of Congressional Affairs

**From:** Franz Boening, Foreign Broadcast Information Service

**Subject:** *Urgent Concern* filed under Title Seven (the *Whistleblower Provision*) of the 1999 Intelligence Authorization Act - CIA's Record of Retaliation Against a Whistleblower

1. This memorandum is an *Urgent Concern*. It describes the history of CIA retaliation against an internal whistleblower. Actions requested (in approximate order of importance):

- Kindly investigate the history of retaliation described below and provide suitable redress.
- Take appropriate action to make CIA an exemplary bureaucracy.
- Enforce the Agency's stated policy on diversity and brief managers about the *Whistleblower Provision* and its implications.
- Consider suggesting to the Senate Select Committee on Intelligence and to the House Permanent Select Committee on Intelligence that performance appraisal reports for whistleblowers be drafted by CIA's OIG.
- Consider reprimanding guilty parties.
- Improve my personal situation by compensating me for past retaliation.

2. This memorandum alleges that some CIA managers have retaliated against me in a series of incidents over the years because of separate *Urgent Concerns* submitted in both October 1998 and again in May 2001. I have suffered discrimination in assignments, promotions, and training as a result. As your office is aware, Title Seven (the *Whistleblower Provision*) of the 1999 Intelligence Authorization Act, expressly prohibits retaliation against a whistleblower for submitting an *urgent concern*. Yet, a whistleblower's fair treatment ultimately depends not so much on the law or an organization's stated policies, but on the quality, integrity, awareness, and goodwill of the senior officials who administer the bureaucracy.<sup>1</sup> Given that the law allows the

<sup>1</sup> If the *Whistleblower Provision* of the 1999 Intelligence Authorization Act, the Lloyd-LaFollette Act of 1912, the USG's code of ethics, other regulations, and CIA's stated *policy on diversity* actually ensured fair treatment and non-retaliation, then a whistleblower would have absolutely nothing to worry about.

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whistleblower, and not the bureaucracy, to decide when he believes that retaliation has occurred and report it to appropriate authorities, I have drafted this memorandum.

3. Background: As some senior CIA managers are aware, in October 1998, I alleged in an *urgent concern* that Lee Strickland, at the time CIA's publicly identified information release officer, had consciously misled Congressman Dennis Kucinich (D-Ohio) in his testimony regarding the failed Human Rights Information Act. Although no OIG investigation ensued, DCI George Tenet privately apologized—apparently very profusely—to Congressman Kucinich for Strickland's conduct.<sup>2</sup> Tenet denied, however, that "criminal intent" had existed on the part of Strickland. In a separate complaint in May 2001, I alleged that CIA had likely violated US law in its overtly reported "relationship" with [redacted]

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[redacted] You will recall that [redacted]

[redacted] In a word, there was strong prima facie evidence that both whistleblower actions were justified. The two *urgent concerns* were not frivolous.

4. (Historical Note: CIA did not investigate either complaint formally. Although this aspect of CIA's conduct is an interesting counterpoint to the subsequent retaliation that I allege, the organization's seeming apathy about the *urgent concerns*, albeit perhaps inexplicable from the public policy standpoint, is not the purpose of this memorandum. It does call into question, though, CIA's general willingness to abide by the spirit of Title Seven, the *Whistleblower Provision*. In fact, CIA's demonstrated disinclination to actually investigate an *urgent concern* formally has been criticized by some in Congress.)<sup>3</sup>

5. The following paragraphs shall describe in detail a series of incidents, decisions, actions, and conversations that, while perhaps individually excusable or understandable, constitute, in the aggregate, a history and pattern of CIA retaliation against a whistle-

Unfortunately, private attitudes are more important than laws, regulations, and stated policies. Managers are too often guided by the former and ignore the later.

<sup>2</sup> Congressman Kucinich had been angered by Strickland's misleading information and by other CIA officials. He told me personally about the DCI's apology.

<sup>3</sup> I read about the alleged "relationship" in the newspapers. Consequently, this *urgent concern* does not constitute official CIA acknowledgment that [redacted] had a "relationship" with CIA. I speak for myself on this issue and only CIA knows the truth of the matter. I remind readers that I enjoyed no official access whatsoever to any USG document, which dealt with [redacted] (except those available at the *National Security Archive* after their official release).

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<sup>4</sup> Other USG departments, including the FBI, the Defense Department, and the Department of Transportation, actually investigate whistleblower complaints. However, CIA's proven reflex in response to any hint of official wrongdoing in an *urgent concern* is to exonerate itself without any formal investigation. CIA does this by simply asserting, "an investigation of this matter is not needed." Yet, the non-investigation of a credible *urgent concern* accompanied by retaliation against the whistleblower is simply not too impressive from the public policy perspective. (For added insight, see Iden cc's comment in "classified" appendix.)

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blower. It is the story of an organization whose managers will retaliate even years after a whistleblower has submitted his *urgent concern*. Although I consider myself a tolerant and reasonably easy-going person, and not one to jump to conclusions, egregious incidents at the Foreign Broadcast Information Service in particular have confirmed my belief that de facto CIA retaliation exists, and has existed for several years. (It has taken years of careful observation to make sense of the individual events.<sup>5</sup>) The retaliation has been sometimes quiet or oblique and other times not so quiet; sometimes coordinated and other times seemingly uncoordinated. Although I do not allege that all CIA managers have retaliated, it is most certainly true that some managers have retaliated—and I have paid a tangible cost for their inappropriate actions. Therefore, I remind the most senior levels of CIA that they are responsible for the conduct of all, repeat all, CIA managers.

6. *It has become time to catalog the irritating history of retaliation for posterity and, I freely admit, possible legal action. For if the incidents are not listed, explained, and dealt with, the law guaranteeing whistleblowers freedom from retaliation (Title Seven of the 1999 Intelligence Authorization Act) will continue its transmutation into an object of quiet contempt—and mockery—by CIA managers. The law will lose all practical meaning and, I fear, some CIA managers will remain tempted to retaliate against the next whistleblower.<sup>6</sup> And, if this happens, what good is the law? Nevertheless, basic fairness demands that CIA be allowed to respond to the allegations. My employer is entitled to attempt to rebut every single allegation of retaliation—which I do not consider even remotely possible—or to take constructive corrective action. It is my hope that OIG will investigate this issue fairly and expeditiously and will realize that my allegations have merit.*

### The Chronology of Retaliation:<sup>7</sup>

<sup>5</sup> But, nearly 23 years as an intelligence officer prepares a person for such observation and analysis.

<sup>6</sup> The American public, according to a poll appearing in *Time* magazine over the New Year, generally believes that whistleblowers play a positive role, (notwithstanding the bureaucracy's opinion of them). Several whistleblowers, including Coleen Rowley of the FBI, made the cover of the magazine only a few months ago. In a word, only bureaucracies dislike whistleblowers. That's why blowing the whistle is not just legally defensible but it is also morally and politically defensible.

<sup>7</sup> Or, more accurately, of *visible* retaliation. The high likelihood of passive retaliation—such as never being offered a management opportunity in 22+ years of service—is an extremely difficult phenomenon to detect and to “prove.” Therefore, I will not engage in non-credible speculation on this issue in the absence of specific evidence.

A few instances of visible retaliation have been omitted. Why? For various reasons: a) I sensed the person who could corroborate my allegation fears to talk to OIG, b) OIG may not protect his/her identity c) CIA may retaliate against them for assisting me d) I do not wish to be so paranoid as to assume that every tiny slight is an instance of retaliation. (In fact, my thick skin is the reason why it has taken me so long to write this memorandum. Besides, I do not like to take USG time to draft *urgent concerns* without good reason. Yet, it is striking that some employees are so afraid of managerial retaliation that they do not want even to be seen to corroborate a whistleblower's allegation of retaliation. This, in itself, is an interesting comment on CIA's corporate culture.)

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7. (Background note: Paragraphs 9-17 were drafted largely in February 1999, only a few months after my first *urgent concern*. They were passed to Identity a (Iden a) of the Office of the Inspector General, as an informal "draft 3<sup>rd</sup> Whistleblower Urgent Concern." I observed to Iden a at the time that I was prepared to take legal action against CIA if the issues described were not addressed. As a result of the draft, Idens a and b generously helped to overcome Foreign Broadcast Information Service's resistance to my employment described in paragraphs 9-10. Both officers were helpful, professional, and very fair-minded. Paragraphs 18-37 were drafted in January-March 2003, after I learned new information that made it clear to me, beyond a shadow of a doubt, that some CIA managers continued to view negatively my whistle-blowing activities in their promotion, assignment, training, and travel decisions. The realization that the issue of continuing retaliation would not just "go away" without confronting the bureaucracy is what prompted me to write this memorandum.<sup>5</sup> It is worth noting that the fact of the first whistleblower action was not tightly held within CIA in fall 1998 and was openly discussed in DO staff meetings. Therefore, it is safe to assume that the second *urgent concern* was also freely discussed, particularly within LA Division of the DO and on the Seventh Floor.)

8. (Second background comment: Where I use quotes below, I do so for emphasis and not because I recall the exact words used, unless otherwise noted. As all readers are aware, personal recording devices are not permitted on CIA property and the conversations below could not be recorded. Therefore, unless described otherwise, my words attempt to capture the essence of what was said. The conversations had no other participants besides myself and one other person. In some cases, I described to others the content of conversations so that they could vouch for their veracity—but in all cases I quickly made informal, contemporaneous notes of what was said. Finally, separate attachments for identities and related documentation are provided. True names have been listed separately for privacy reasons and other identities and facts because I believe they are classified or classifiable.)

9. The first incident occurred about three and a half months after my first whistleblower *urgent concern*. During a 15-20 minute telephonic conversation late on the afternoon of 18 February 1999, Iden c, then employed by the Foreign Broadcast Information Service, informed me that I was unsuitable for a position as an analyst (Iden d), a job for which I had formally applied during the first week of January 1999. I had applied for the position about two months after my first whistleblower action. With perceptible nervousness in his voice, Iden c contended that my writing skills were "not good enough" for FBIS, that my analytical skills were poor, that despite my acknowledged fluency in Arabic, extensive agent-handling experience, strong area knowledge, and the fact that I was the *only applicant*, I would simply not be a "good fit" at FBIS.

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<sup>5</sup>It is better to deal with the problem of retaliation definitively, to include possible legal action, rather than for the rest of my career. This is not just good for me but for the next well-intentioned guy who wishes to invoke Title Seven.

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10. But, it was Iden c's additional remarks that really caught my attention and which I found particularly irritating—as they almost certainly constituted a form of retaliation. In a memorable exchange, Iden c characterized me as *“enthusiastic, aggressive, perhaps abrasive, and the classic lone wolf”* (I recorded for posterity Iden c's exact words immediately after the conversation). He maintained that it was simply “too risky” for FBIS to employ me and that he feared that I would prove to be like an earlier employee who, although brilliant, had just left Iden c's component because of his apparent lack of interpersonal skills. Yet, he could cite little evidence in support of my alleged lack of “interpersonal skills.” At the same time, Iden c contended that if he could write a description of the *“ideal employee”* for Iden d, that employee would have all of my objective qualifications. He quickly asserted, however, that he didn't want me and that *“it would be better to have no one in Iden d rather than you.”* Shortly thereafter, superficial “pleasantries” were exchanged and the conversation ended. (At the time of the conversation, I enjoyed good personal relations with members of my old component and numerous friendly contacts in the building. My PARs reflected my competence and most people thought that I had an excellent sense of humor.)

11. Interpretation: As I have mentioned, the incident described above occurred about three and a half months after my first *urgent concern*. Is it not possible that Iden c considered whistle-blowing of any sort the action of a *“lone wolf?”* Could a reasonable person not interpret Iden c's seeming fixation with my personality as a form of retaliation?<sup>9</sup> (Ironically, I did not object to the adjectives Iden c used to describe me. But it is improper to deny a qualified person a job opportunity, especially when he is the only applicant, based on selective and anti-diversity criteria.) Would Iden c have preferred that I possess the opposite qualities—that I be unaggressive, unenthusiastic, docile, and possess all the personality of a domesticated sheep? What had triggered Iden c's reaction, as he did not know me personally?

12. For the record, I was not interviewed by Iden c in January or February 1999. I had met Iden c, however, in the summer of 1997 when I applied for a different position at FBIS. At that time, there was no perceptible tension of any sort between Iden c, his staff, and myself. In fact, during our only meeting, Iden c had given me the strong impression that he was eager to have me.

13. I believe that Iden c's cursory judgments concerning my “poor writing ability” apparently stemmed from a subordinate's assessment of a lengthy non-commissioned

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<sup>9</sup> The astute reader will detect in this memorandum a recurring CIA concern with my “personality” or my “opinions.” This is a perfidious (and deniable) way for a bureaucracy to engage in retaliation without publicly acknowledging that it has a “philosophical problem” with the whistleblower. Yet, I ask, do non-whistleblowers get this type of scrutiny? What certain managers do not understand is that this strange concern is not permitted by any CIA regulation, the policy on diversity, the USG's code of conduct, the DCI's stated views, or any US law (including the First Amendment and the Lloyd-LaFollette Act) as long as these same employee's opinions do not impinge on good security or on professional performance. *Of course a whistleblower is critical of CIA conduct! What of it?* Yet, in my case, CIA cannot possibly claim that I have been professionally unproductive.

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1997 report I wrote on a sensitive issue in Middle Eastern terrorism, although it is equally likely that he was aware of the Lee Strickland *urgent concern*. This terrorism report had received very considerable in-house praise, at very senior levels, for its objectivity, boldness, and honesty. Indeed, Tom Newcombe, then in charge of HUMINT for the House Permanent Select Committee on Intelligence, told me that the terrorism report—and CIA's considerable reluctance to allow Congress to see it in fall 1997 and January 1998—had figured prominently into Congress' desire to establish the Whistleblower Provision in the 1999 Intelligence Authorization Act. Newcombe thanked me for the report and congratulated me, on behalf of HPSCI, for bringing it to their attention.<sup>10</sup>

14. The second incident occurred in mid-February 1999 when my immediate supervisor, Iden e, informed "certain members" of my component, Iden f of IMS, that IMS had instituted a policy to henceforth "severely limit overtime and/or compensatory time to IMS employees." Iden e proceeded to inform me that I would no longer be eligible for compensatory time but that my two colleagues, Idens g and h, *with whom I shared an office and job descriptions*, would continue to be eligible for overtime. When I formally complained about this apparent imbalance on 8 March 1999, Iden e could not explain the decision to my satisfaction and contacted Iden i. Iden i reiterated that only I would be ineligible for compensatory time.

15. Interpretation: Although there may be a reasonable explanation for this incident, it certainly isn't obvious to me. *I stress that I was the only member of my branch to be affected by the "new T/A policy," which had been introduced ostensibly to limit fraud.* In addition, I had regularly worked a small number of compensatory hours in my position and no one had accused me of any form of malfeasance or fraud. After checking with other IMS employees I learned that many were not even aware of the new policy and that, if it existed, it was enforced apparently only selectively. Therefore—and I am not one to jump to hasty conclusions—a neutral observer could easily conclude from the IMS action that I had been placed in a special category of "suspect employees," probably because of my whistle-blowing. The practical effect of the "new" TA policy was to deny *only me* a privilege enjoyed even by branch independent contractors.<sup>11</sup>

<sup>10</sup> After 9/11, I was contacted by CIA's National Intelligence Council and by Eleanor Hill's 9/11 Investigative Committee to discuss the report. In 1997, Newcombe told me that he had had to spend "all afternoon on the phone to the Seventh Floor" in order to warn CIA management against the temptation to retaliate. The prospect of retaliation was very real in Newcombe's view and could occur despite HPSCI's praise for the report. In hindsight, though, it is not so clear that Newcombe's effort succeeded. Because in 1998, I had applied for a routine GS-12 position in the CIA ops center, primarily in order to go to a flexible schedule. I was a GS-13 at the time. Another candidate was selected. Although I have not retained the details of this application, clearly, a junior officer "with broader experience" must have been chosen.

<sup>11</sup> Obviously, I did not begrudge compensatory time to my supervisor, Iden e, as his wife suffered from a serious medical condition that had forced him to exhaust his sick leave. Nevertheless, there was no excuse for management not to treat me like other IMS employees in my branch who retained their eligibility to earn CT/OT. Was this a form of retaliation? As I edit this footnote in early 2003, I remain convinced that it was.

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16. The third incident occurred on 1 March 1999 when I was informed by Iden j of the Office of Military Affairs that I would "under no circumstances" be allowed to be CIA's TDY representative in Iden k. This was during the period immediately before NATO's military deployment to Albania the same spring. I had volunteered to go to Iden k in early February 1999 at a time when CIA's volunteers could be counted on one hand. According to Iden j, a person calling on behalf of Iden l, then a senior official in CE Division, had informed the former that CE Division "would 'go to the mat' to prevent Boeing's deployment to Iden k." The CE Division caller did not detail to Iden j why I was "unsuitable" but noted that "Boeing has done things abroad that we are concerned about..." (Comment: What had I done?<sup>12</sup>) Iden j told me later that he was quite confused by his conversation with CE Division and remarked that, as far as he was concerned, I was not only well-qualified to deploy to Iden k, but that he considered me his "number one candidate," an opinion he reiterated even after I apprised him of my whistleblower urgent concern. He told me, with some irritation, that CE Division had supplied absolutely no volunteers for this possibly risky deployment and that he did not have any other suitable candidates.

17. Interpretation: What was it that set off managers in CE Division when they heard my name? Was their refusal to allow me to go to Iden k a form of CIA retaliation? You will recall that the first urgent concern took place approximately four months earlier. Moreover, I had not been overseas with CIA in years, having returned from Iden m in summer 1995.

18. Spring 1999: Upon eventual assignment to FBIS, I was asked to work on a separate, non-traditional project, unassisted by any other member of Iden n. The project consisted of single-handedly mapping a given constellation of websites. Upon completion of the project in summer 2000, FBIS took no action on the data compiled, despite the intelligence potential it represented. (In late October 2002, a personal friend at FBIS, Iden o, having been apprised of the incident described in paragraph 29, confided to me privately that branch employees in Iden n "had been cautioned about excessive contact

<sup>12</sup> Although retaliation for whistle-blowing is the leading candidate given the timing, there is a second possible theory: I was recalled short of tour in 1995 almost certainly for having protested privately in fall 1994, in a one-page cable to the DDO, CIA's alleged relationship with \_\_\_\_\_ which I had read about in the *International Herald Tribune*. (This was before CIA's enlightened "policy on diversity," which was first promulgated in February 1999.) According to the press, \_\_\_\_\_

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*Important Note: This short footnote does not constitute CIA acknowledgment that \_\_\_\_\_ worked for CIA. I had no access to any classified information on this issue and I don't speak officially for the organization. I am simply relating what I read in the newspapers. It is perhaps significant, though, that after I returned to CIA Headquarters in 1995, I was asked to begin a new and interesting career in the basement of Headquarters as a declassification worker.*

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*with me*" in spring 1999. He observed, however, that since that time, nearly everyone had grown to like me! In fairness to FBIS, by summer 2000 the manager of Iden n, Iden c, who had initially rejected me, seemed to appreciate my work very much, probably grew to like me, and was unhappy that FBIS had taken no action with the Internet data.<sup>13)</sup>

19. Interpretation: While it may be justifiable to have a new employee work separately, for a limited period, is it ever appropriate for CIA managers to actually warn other employees about new ones? Is this the CIA's "*policy on diversity*" in action?<sup>14</sup> Or do only whistleblowers get this special treatment? Is not the net effect to prejudice everyone in advance against the whistleblower?

20. Late summer 2000: FBIS management denied me the opportunity for half-time (online) study in computer technology/management with the Rochester Institute of Technology. My supervisor at the time, Iden p, who had encouraged me to apply and with whom I had an excellent relationship, told me that she considered approval of the request to be "pro-forma." (Note: I regret that I do not have a copy of the denied application. Presumably, it is available from FBIS/HRS. Iden p will vouch for the fact of the application.)

21. Interpretation: A form of retaliation? In hindsight, it certainly seems likely. It is worth remembering that other FBIS officers, some of them with less experience or at a lower grades, had been granted sometimes expensive study opportunities, including the officer who denied the request, Iden q, and the officer who is investigating my grievance (see paragraph 31), iden u. Moreover, FBIS has sponsored employees even when the proposed field of study (i.e., journalism, business, or international relations) bore only a superficial relationship to FBIS' intelligence needs.

22. Summer 2000: During an out-of-cycle polygraph, I was subjected to an inordinate number of probing questions about my contact with Congressmen regarding my *urgent concerns*. The repeated questions—and suggestions that I was not being forthcoming—finally resulted in my warning the examiner that I, "*was beginning to view his incessant questions about strictly whistleblower activities as a possible form of CIA retaliation.*" I

<sup>13</sup> Iden c's personal experience with me is an excellent reason why the policy on diversity should be enforced. Iden c initially rejected me and then discovered that I was very productive.

<sup>14</sup> The words of CIA's *Statement on Diversity* are indeed something everyone can be proud of. But, CIA's general non-enforcement of the policy is not so admirable. An excerpt from the policy reads, "*We must ensure that those with different perspectives have a seat at the table and a meaningful voice in the discussion . . . each and every one of us. . . can find a ways to help make our offices vibrant places where diversity is welcome, where a variety of views is sought and heard, where equal opportunities for training and advancement are afforded, where people are valued for the content of their characters and rewarded for the value of their work. . . the higher your rank, the more accountable you will be for ensuring that this Agency and Community are inclusive institutions . . . that differences are regarded as organizational assets rather than liabilities, and that every employee is treated with fairness and dignity.*" (Comment: Noble sentiments, indeed. Unfortunately, CIA does not like to hold managers responsible for their intolerance or occasional vindictiveness. This is one reason why blowing the whistle is so unwelcome.)

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reminded him of Title Seven, asked if he had read it (he had not), and informed him firmly that we should "change the subject." I told him I would answer no further questions dealing with my congressional contacts or related *urgent concerns*.

23. Interpretation: I believe that it is an arguable form of retaliation when a whistleblower gets raked over the coals about his *urgent concerns* during a polygraph. Do all CIA officers get this treatment? Why was CIA so obsessed with whistleblower activities over a year and a half after the *urgent concern*? Was this proper? What was the security issue when everyone I had spoken with at Congress had had the requisite security clearances?

24. In early February 2002, shortly before I was to leave on a 10-12 day tdy for Thailand and Pakistan,<sup>15</sup> Iden t obliquely signaled to me that FBIS management would be watching my behavior particularly closely. She said, "*this is a big tdy for you, Franz. If you perform well it will 'help a lot.'*" As I considered her comment somewhat odd, I asked what exactly she meant? I observed to her that my personal relations were good; my intelligence production in the element had been exemplary and pioneering; my briefings on militant Islam and Internet exploitation had been well-received around the Intelligence Community and beyond; that no one had ever complained about their content; that I had been on numerous, often successful foreign tdys for CIA and; that briefing FBIS foreign bureaus seemed to me a rather simple task. "What's to be worried about?" I asked. She remarked, "*some people will be watching your performance closely, Franz. Do well.*" (Note: Gina [redacted] the former Director of FBIS, stopped me in the hall later in the spring of 2002 to tell me personally how well she thought I had done on the tdy. She told me, [redacted] Bureau could not say enough good things about you!" I thanked her for her kind remarks but observed that my briefing duties had been simple enough.)

25. Interpretation: Iden t's remarks do not represent any personal retaliation against me although, upon reflection, they certainly clarified an irritating phenomenon, namely a more insidious form of managerial retaliation. *I assert that iden t had signaled to me CIA management's extreme reluctance to ever send me abroad again for any extended period of time.* CIA seems to prefer it when I don't travel. . . in order to keep an eye me, perhaps? In this regard, kindly note that Iden t's remarks were completely consistent with the incident described in paragraph 15 when CE Division had said, "*We will go to the mat to prevent Boeing's deployment to iden k.*" They are also consistent with the DO's denigration of my qualifications in response to a routine job application described in paragraph 32 (*which would require an extended period abroad*); they are consistent with the fact that *I have not been allowed an orientation/training tdy to FBIS' Mideast [redacted] bureaus* (like all new officers receive) and; they are consistent with iden o's background comments on how FBIS viewed me when I was first assigned to [redacted]. Yet, what had I done to irritate CIA—that is, apart from blowing the whistle? Had I ever been disciplined for insubordination? No. Did I lack professional competence, experience, speaking, writing, analytical, or linguistic ability? No. Had I had weak

<sup>15</sup> My first trip abroad on official business in about seven years.

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performance appraisal reports? No. Did I have no sense of humor? Again, no. But, I had been a whistleblower.<sup>16</sup>

6 26. During an outrageous incident on 1 March 2002, my immediate supervisor at FBIS, Iden r, informed me that she had no complaints at all about my professional performance and that she considered me *"very worthy of promotion to GS-14."* The 45-minute conversation began at 1300 hours in her office in 3S-11 [redacted] during a routine PAR counseling/feedback session. Nevertheless, she remarked that I could do *"one thing"* that would *"greatly help my chances."* With noticeable hesitation, she asked me to *"keep my mouth shut."* She explained, *"this would help a lot."* (Note: Iden r used rather inelegant language here; she did not say, "remain silent" or "be quiet." I recall that her words were less refined than this although she may have said merely, *"keep your mouth closed."*) As I was completely taken aback by her request, I asked her to repeat her remark. She did so, and I reiterated that I did not understand what she meant by *"keeping my mouth shut."* I reminded her that I got along with everyone in the element and that no one at the numerous audiences that I had spoken to about militant Islam or Internet exploitation had ever complained about any inappropriate remarks.<sup>17</sup> She acknowledged that this was indeed the case. Consequently, I probed more deeply and asked again exactly what she meant by *"keeping my mouth shut?"* After a long pause and discomfort evident from her body language, she said, *"you know what I mean— memos to the Director etc."* Then I exclaimed, "Oh, now I understand! You mean whistle-blowing activity, don't you? Because those are the only 'memorandums' that I have ever sent to the Director's office."<sup>18</sup> Iden r did not dispute my interpretation of her remarks. I firmly reminded Iden r that my whistle-blowing was protected by statute and that she was not allowed to even take it into consideration in professional settings. She responded, *"it may be true that you are protected by law—but I am trying to help you by telling you how the bureaucracy actually works."* She continued, *"It doesn't matter what the law says—the CIA bureaucracy will never promote someone who seeks to embarrass it. If you desist, you will probably be promoted. However, if we promote you and you engage in further whistle-blowing, you will remain at your grade forever. It is your choice."* Iden r added, *"you are free to your opinions but you must realize that such activities are tacitly taken into account."* I reminded her that the purpose of my whistle-

<sup>16</sup> A careful study of my career reveals promotions at a statistically average or somewhat above average rate from 1980-93 (once every 2.6 years). From 1993 to the present, however, everything ground to a complete halt (zero in nearly 10 years.) Now, why is this? My professional performance certainly hadn't fallen off; that is, it continued to compare quite favorably with others in my job description. *But it is interesting to note that after the first urgent concern in 1998, the egregious, recurring instances of retaliation really began to multiply.* I assert this is not a coincidence. It is retaliation. (Since the whistleblower actions, I haven't been able to obtain even an interview for a position outside of FBIS! This is "passive retaliation" at work.)

<sup>17</sup> I have given numerous presentations on militant Islam, (and to a lesser extent, on Internet exploitation and globalization issues), within the IC and elsewhere in the USG. Since December 2000, audiences have included the Rand Corporation, the State Department, the Naval Criminal Investigative Service, the National Air Intelligence Center, several Pentagon elements, SACLANT, the FBI, US Customs, NSA, foreign liaison services, and numerous offices within CIA.

<sup>18</sup> The Director of Central Intelligence.

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blowing was not to embarrass the CIA per se, but rather to have management investigate apparent wrongdoing. I told her she seemed to me to be making an explicit link between promotions and whistle-blowing and that it was very difficult to interpret her remarks otherwise. Iden r responded, "*Look, I am trying to help you. It is already an 'uphill battle' (Iden r's exact phrase) convincing others of your worth. I just want to explain to you how the bureaucracy works. It is reality. Besides, the bureaucracy will never explicitly link getting promoted to not engaging in whistle-blowing. The bureaucracy is more clever than this. Instead, it will say, 'Boeing can't communicate effectively.' Listen, I hope that you are not so irritated that 'you want to sue me'.*" The conversation ended inconclusively shortly thereafter.<sup>19</sup>

27. The general details of the above conversation—and the fact that Iden r had explicitly linked being promoted to not engaging in whistle-blowing—were shared with Iden s of FBIS on or about 11 March 2002 (first thing in the morning after Iden s's return from tdy), with Iden a of OIG on 12 March (shortly after lunch), with Iden t in April 2002 and again in February 2003, with Iden q (at his request) in July 2002, with iden y in November 2002, and with Iden u on 24 January 2003.

28. Interpretation and summary: A senior manager at CIA, the person who writes my PAR, explicitly linked getting promoted to not engaging in whistle-blowing. She asserted that the bureaucracy takes whistle-blowing into account in promotion decisions and that if I engage in further whistle-blowing, "*you will never be promoted.*" She warned me to "*keep my mouth shut*" and not to "*write memos to the DCI*" if I sought advancement. This would "*help a lot.*" The same manager expressed the view that the "*law doesn't matter*" and that "*the bureaucracy will not promote anyone who embarrasses it.*" Question: Can any reasonable person not interpret Iden r's remarks as a threat of retaliation? If her remarks are not retaliation, I don't know what is. Did the congressional drafters of Title Seven intend for whistleblowers to be threatened by their managers? What is this?!?! (Note: I respect the law and do not share Iden r's disdain for the Whistleblower Provision. In mid-July 2002, Iden q, an FBIS manager, immediately disassociated himself from Iden r's remarks after asking to see me. He did not deny Iden r's remarks or defend her in any way. Nonetheless, no other FBIS manager has disavowed her remarks, including Iden r, to this day. Iden s and u, however, found iden r's comments inexcusable. Iden t could not believe that Iden r had actually uttered such words.<sup>20</sup> Iden a speculated that Iden r might deny her remarks if asked.)

29. Early July 2002: Iden r included in the first draft of my PAR, "*Boeing has been cautioned not to express his personal views in front of audiences.*" I protested her wording and reminded her that no one had ever complained to FBIS management about

<sup>19</sup> Actually, I found Iden r's remarks so annoying that I did want to sue her about a half hour later. Yet, if her remarks represent management's general view of the *Whistleblower Provision*, then perhaps CIA needs to start holding orientation seminars on the law. I alluded to this in paragraph one.

<sup>20</sup> "could not believe" in the sense that Iden t couldn't believe that Iden r had said something so inappropriate.

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any inappropriate remarks made by me so why was I being warned against "inappropriate expressions of opinion?"<sup>21</sup> Iden r conceded the point, deleted the phrase—and strengthened language alleging that I could not get along with others. (Please find attached partial Lotus note documentation of this conversation as well as Iden r's response. You will observe that Iden r was seemingly very eager to de-link whistle-blowing from promotion. Kindly observe, however, that she denied no portion of my account of our 1 March 2002 conversation. Nor did any of the other recipients of my Lotus note. Iden q, my former supervisor, was particularly eager to distance himself from Iden r's comments.<sup>22</sup>)

30. September 2002: During an informal hallway exchange, Iden r suggested to me that "being nice" to Iden v might be of benefit to me. Iden r reminded me that Iden v "will be your advocate" on the GS-13 panel. I politely rejected Iden r's suggestion to ingratiate myself and told her that although I had nothing against Iden v, I did not see the need for sycophancy. I reminded her that CIA was supposed to be a meritocracy and that my objective performance (outstanding by any measure), spoke for itself.<sup>23</sup>

31. During a serious incident on 25 October 2003, the senior officer in question, Iden v (my "advocate" on promotion panels) made it clear to me that she "was concerned" about my effect on young people and privately believed I should have a *separate office in order to limit my contact with them (!)*.<sup>24</sup> This issue, described at length in the attached grievance action, took place during a feedback session I had requested after being denied promotion. At the very least, Iden v's attitude illustrated her disdain for CIA's policy on diversity. At the worst, it can be reasonably interpreted, certainly in my case, as retaliation against a whistleblower. *Can CIA cite any other employee who has been told he is not fit to talk to young people? (Who might even deserve to be "quarantined?!?!") What is this?! Is it just a "coincidence" that the only person who is told he shouldn't share critical opinions about CIA's intelligence performance with young people is also the only person in FBIS who has shared his opinions—quite vigorously—to members of Congress on issues of seeming wrongdoing by CIA? How is it possible to be allowed by CIA and/or Congress to make critical statements in an urgent concern or to the 9/11 Investigative Committee and be punished when one makes identical statements to "young people?"* Therefore, kindly consider all portions of the grievance to be part of this

<sup>21</sup> Given Iden r's remarks on 1 March 2002, I assert that she considers whistle-blowing the "inappropriate expression of opinion." Otherwise, why had she threatened me? Unfortunately, her opinion is almost certainly shared secretly by most members of the bureaucracy. This is the real problem.

<sup>22</sup> I was being polite to Iden r in my Lotus note when I wrote, "probably out of genuine concern for me." I wrote this before the events of October 2002.

<sup>23</sup> Iden bb, a separate manager named in the grievance described in paragraph 31, objected to this characterization of CIA. In mid-December 2002, he threw up his hands during a private PAR meeting with me and exclaimed in exasperation, "Who ever said that CIA was a meritocracy?" (Answer: George Tenet in his 1997 confirmation hearing.) Please see classified appendix for further comment on my professional performance.

<sup>24</sup> Iden v has been accused of mistreating employees in multiple grievance actions.

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urgent concern. This is retaliation.<sup>25</sup> (Note: Idens a, o, p, s, t, u, y, z, aa, and bb are aware of the gist of Iden v's comments. Iden bb, in particular, confided to me that Iden v told him I was unfit to mentor any young person.)

32. In late October 2002, I was told by the Near East Division of the DO that my qualifications for DO work are "*below our threshold for necessary skills and being current in terms of training/experience*" after I had applied for a mid-level, non-managerial position in an Arab country—that did not even require language ability at the time of application. The position was a routine job as Iden w. The DO refused to explain its negative decision despite two requests for clarification. It is worth noting that I remain a strong speaker and reader of Arabic (a skill in extremely short supply in the Intelligence Community), that I speak passable French and German, that I have 10+ years of agent-handling and liaison experience, that I have been asked to lecture to DO audiences on intelligence issues, that I have been a regular trainer in the avant-garde field of Internet exploitation, and that the DO had employed my skills as an interpreter in 2001 and 2002. My PARs have been generally strong—often outstanding—and I have never been accused of insubordination.<sup>26</sup>

33. Interpretation: This was clearly an instance of retaliation against a whistleblower, in my view. The type of job that I had applied for is routinely filled by 2<sup>nd</sup> or 3<sup>rd</sup> tour officers—and I have considerably more experience than this. In fact, if the press is to be believed, even non-DO officers have headed DO stations.<sup>27</sup> Therefore, I theorize that certain officers in the DO did not appreciate my allegation of possible criminal wrongdoing in my second *urgent concern* (May 2001) and that its extreme irritation manifested itself in the DO's response to my job query—the same way it exhibited itself in 1999 (paragraph 16). It is one thing to say, "we are sorry but this position has been assigned to a more qualified person." It is an entirely different thing to clarify nothing and to tell someone with my professional background that I no longer meet "DO standards." I contend that as there is an extreme shortage of officers who combine strong Arabic-language skills, strong operational backgrounds, and a strong knowledge of terrorism issues, perhaps the handful of officers who possess all three attributes should be considered qualified, in principle, for DO positions. Moreover, those officers, like myself, who lecture routinely on the intelligence issue of the hour, who have assisted the DO in recent years, and who pioneer whole new intelligence sources for CIA, might even be considered very qualified. (Note: Copies of the Lotus note exchange with NE Division are attached.)

<sup>25</sup> It is nothing short of infuriating to be told by one's supervisor—after having risked one's neck in Beirut and Iraq in the past, as I have, and after having developed an entirely new set of intelligence sources for the IC—"You know what? Personally, I don't even think you're fit to talk to young people." This is CIA's reaction to a whistleblower and the organization's "diversity policy" in action. Moreover, FBIS has not resolved the grievance, to date. Regrettably, this too, is predictable.

<sup>26</sup> Then again, the bureaucracy probably considers any form of whistle-blowing a type of insubordination. In any event, their actions certainly suggest this.

<sup>27</sup> The press has reported that an analyst used to head the [REDACTED]

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34. On 18 November and 12 December 2002, the CIA changed the ground rules regarding my declassification challenge to documents I authored in the second *urgent concern*. From summer 2001 until spring 2002, CIA had requested a series of edits to the documents but also had acknowledged my ultimate right of appeal to the Inter-Agency Security Classification Appeals Panel (ISCAP). Believing that flexibility on my part would lead to document release, I tried to make the requested changes. "Negotiations" over editing changes were ended in May 2002, however, when it became clear to me that CIA really wanted me to rewrite the entire document collection, in order to limit public embarrassment.<sup>28</sup> I considered this demand unacceptable and initiated a formal classification challenge, an action permitted and encouraged by Executive Order 12958. CIA officially informed me, however, on 12 December 2002 that the challenge would not be allowed to move forward to the ISCAP, an action I contended is a likely violation of the E.O. The above disagreement with CIA, and the seeming illegality of CIA's course of action, was sufficiently serious that the Office of the Inspector General accepted it as a target of investigation on 13 December 2002. Moreover, the ISCAP has informed me preliminarily that it will seek the documents in question.

35. Interpretation: Was the abrupt "rule change" a form of general harassment of a whistleblower (i.e., a form of retaliation?)—or was the rules flip-flop simply innocent bureaucratic ineptitude? Although both interpretations are possible, it seems to me that there was never an intention to deal fairly with me on the classification challenge. CIA's intention was always to stonewall. Also, did Iden x, who remains an influential official in declassification and who was accused of wrongdoing in the first *urgent concern*, play any role in CIA's decision to derail the classification challenge (i.e., the documents in the *second urgent concern*?) Did Iden x recuse himself? While I don't have all the answers to these questions, a reasonable observer would have to admit that CIA's seeming harassment with regard to the classification challenge could be interpreted as a form of retaliation.

36. Summary: The documented history of retaliation, my superior performance at FBIS and elsewhere over the last decade, and the fact that I have remained at the same grade for over 40% of my career (itself an unusual statistic), has persuaded me conclusively that I will continue to be judged by a different set of standards than other employees. My objective performance will never be sufficient to please CIA—as it is not the main criterion in my case.<sup>29</sup> I assert this state of affairs is the direct result of whistle-blowing

<sup>28</sup> I did not simply deduce this. In May 2002, a senior CIA officer, Iden cc, told me point-blank that the real issue surrounding release was not the protection of "*sources and methods*." Rather, it was to protect the CIA's reputation. I guess this is why CIA was so determined to "classify" the news stories, which had formed the backbone of my second *urgent concern*. Of course, when any USG office sees fit to classify a series of press stories mainly to avoid embarrassment and accountability, in seeming contravention of Executive Order 12958, it is a serious public policy issue.

<sup>29</sup> For instance, in just a one-month period, October 2002, I was told by one senior manager—without a shred of explanation or documentation—that that she was "concerned" about my contact with "young people." Later in the same month, the DO called my professional qualifications sub-standard—and explained nothing. These assertions were juxtaposed against a very strong professional performance on my part.

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and the "negative character traits" some CIA managers perceive to be associated with whistle-blowing.<sup>30</sup> I believe that I have demonstrated this persuasively in the paragraphs above. For this reason, the whistleblower must remain ever vigilant. And, it is the reason for this memorandum. I have been denied promotions, training opportunities, and assignments over the years as an almost certain result of whistle-blowing. This is a violation of the letter and the spirit of the *Whistleblower Provision* and other USG policies. No USG organization, department, office—or concerned taxpayer—should tolerate it when an individual manager, no matter what his rank or motivation, retaliates against a whistleblower.<sup>31</sup>

37. I look forward to a fair resolution of this *urgent concern*. However, if the very serious public policy issue of direct and indirect retaliation against a whistleblower cannot be resolved satisfactorily inside the bureaucracy, then perhaps it would be best to change the venue. (Fortunately, the playing field is reasonably level inside a courtroom.) I regret that I must warn you of this possibility as it is not meant to be a threat, but it seems only fair that you be made aware of how seriously I view this problem.

I thank you for your kind attention to this matter and await your reply.<sup>32</sup>

Respectfully,  
Franz Boening

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<sup>30</sup> It is particularly striking that when a USG office, such as many within CTC, the DI, at the State Department, the Rand Corporation, the Pentagon, the National Air Intelligence Center, the NSA, or at SACLANT, hasn't an inkling of my previous whistle-blowing, I am invited to speak, to correspond, to travel, and always receive thanks for my intelligence contribution. (I have had more invitations to travel from non-CIA offices than from CIA itself.)

<sup>31</sup> It is quite easy to demonstrate that USG bureaucracies do retaliate. CIA is not uniquely guilty and the fate of whistleblowers is always problematic. Indeed, the expectation of retaliation, even among courageous officers like Coleen Rowley at FBI, explains the paucity of whistleblowers. When it comes to whistle-blowing, the fear of retaliation permeates the workforce. For instance, few officers privately believe that the lack of internal whistle-blowing is due to the lack of incompetence, under-performance, and malfeasance at CIA. These all exist in reasonable quantities at CIA the same way they do in any government bureaucracy. If you don't believe this assessment of the perils of whistle-blowing, just ask the CIA employee sitting next to you. (Then again, why do Inspectors General exist if not to ensure that bureaucracies obey established rules, procedures, policies, and the law?)

<sup>32</sup> Do not be irritated at receipt of this memo as bureaucratic retaliation is a virtual fact of nature. Besides, irritation tempts some to engage in even further retaliation. Obviously, this is something I will attempt to monitor. And, if new instances of credible retaliation occur, evidence will be presented inside a courtroom.

Please assume that I am a level-headed, normally easy-going guy who believes in your goodwill and who is always willing to discuss, explain, and clarify anything you request. Moreover, I hope that you sense I have tried to present this issue coolly, carefully, and, most importantly, accurately. At the same time, of course, I am very critical of CIA retaliation. This is because the intent of the law is clear: no retaliation against whistleblowers is to occur, period. Besides, what good is the law if retaliation is tolerated?

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**Attachments:**

1. FOUO Identities list
2. "Classified" Identities list
3. Lotus Note exchange with Iden r
4. Lotus Note exchange with NE Division
5. Copy of grievance against Iden v

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Identities

Handwritten vertical text on the left margin: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

- (e) 1. Iden a: George W. JOIG
- 2. Iden b: Pat HRS
- 3. Iden c: Dave FBIS
- 4.
- 5. Iden e: Gerald IMS
- 6.
- 7. Iden g: Nancy IMS
- 8. Iden h: Barbara IMS
- 9. Iden i: Tom IMS
- 10. Iden j: Peter
- 11.
- (e) 12. Iden l: John J. [unclear]
- 13.
- 14.
- 15. Iden o: Youssef FBIS
- 16. Iden p: Bonnie FBIS
- 17. Iden q: Ken Hughes, FBIS
- 18. Iden r: Kelly FBIS
- 19. Iden s: Joe FBIS
- 20. Iden t: Hollis FBIS
- 21. Iden u: Melda FBIS
- 22. Iden v: Joyce Forrest, FBIS
- 23.
- 24. Iden x: Ed
- 25. Iden y: Jim FBIS
- 26. Iden z: Sylvia
- 27. Iden aa: Tom FBIS
- 28. Iden bb: Michael FBIS

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Identities

4. Iden d: HU-110, a position in FBIS/Gulf-Med as an open source analyst/linguist

6. Iden f: Initial Review Branch, DO/TMS

11. Iden k: Kosovo/Albania

13. Iden m: [redacted] DO

14. Iden n: Gulf-Med Team, FBIS

23. Iden w: [redacted] DO

27. Iden cc: Bill McNair, DO/IRO (McNair's comment: The DO/IRO told me in May 2002 that, in addition to fact that the [redacted] urgent concern would hurt CIA's reputation, the other problem with the urgent concern was that "it's all true." Now... as I alleged possible criminal wrongdoing in my complaint, am I to conclude, based on McNair's comments, that CIA did indeed facilitate [redacted])

Performance:

While I have alluded to the regular talks I deliver on militant Islam, this is not my most substantial contribution to the intelligence mission. At FBIS I performed pioneering work in an entirely new set of intelligence sources for the Intelligence Community. I was the first officer in CIA—or anywhere in the IC—to

beginning in November 2001. These websites have provided nearly 100 unique and well-received intelligence reports to date and will be coverage for the foreseeable future. As a result of my work, FBIS now has 5-6 fulltime employees and subcontractors monitoring nothing but [redacted] (Although I established the field, I did not author all of the reports. FBIS has other fine linguists and analysts.)

The regular, systematic exploitation of the [redacted] is an entirely new OSINT field for CIA and FBIS. Yet, it did not exist before I demonstrated its intelligence value through my reporting.

(In other words, for 60 years, from 1941-2001, FBIS exploited TV, radio, newspapers, periodicals, and some Internet sites, primarily those representing the professional media. However, since November 2001 and increasingly throughout 2002, the organization has begun the regular [redacted] [These are one of the few places where collectors can watch [redacted]]

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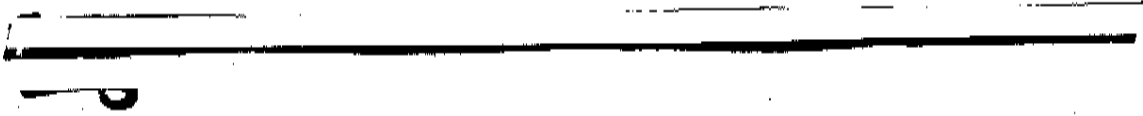
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May 20, 2004

To: Inspector General, Central Intelligence Agency

Information: Executive Director, Central Intelligence Agency

From: Franz Boening, Foreign Broadcast Information Service, CIA

Subject: *Urgent Concern* – Prohibited Personnel Practices at CIA:  
Continuing Bureaucratic Retaliation Against a Whistleblower (U)

- Refs:
- 24 March 2003 *Urgent Concern* (Chronology of retaliation/prohibited personnel practices through spring 2003).
  - 10 May 2001 *Urgent Concern* (details probable CIA misconduct vis-a-vis 'M').
  - 5 February 2004 Classification Challenge filed by Franz Boening (Challenged CIA classification of interviews and clarification resulting from ref a.)
  - Grievance against Iden h, 7 November 2003
  - Grievance against Iden o, 16 January 2003. (U//AIUO)

1. **Introduction:** This memorandum constitutes an *Urgent Concern*, filed under Title Seven of the 1999 Intelligence Authorization Act (the *Whistleblower Provision*). It is the second *Urgent Concern* that alleges that some CIA managers have engaged in *prohibited personnel practices* as a result of previous *urgent concerns* I have filed. Such practices, when directed at a protected federal whistleblower, are violations of federal law. This memorandum will recount the history of illegal treatment detected since ref a. (U)

2. I contend that some CIA managers have not treated me in accordance with the federal laws established to protect whistleblowers. Some have done this by improperly basing their personnel decisions on my "hall file" rather than my objective professional performance, and no offending manager has been called to account. I ask that you investigate the incidents described below, bring yourself to take appropriate disciplinary or corrective action, and ensure that no further retaliation or threats take place.<sup>1</sup> I remind you that any form of bureaucratic retaliation, reprisal, or threat against a protected federal whistleblower constitutes—if proven—a violation of the United States Code.<sup>2</sup> This

<sup>1</sup> You may also wish to compensate me in some way for the virtually indisputable fact that some managers have taken into account my previous whistleblowing in their professional treatment of me. This has caused me to be denied training, promotions, travel, and internal job opportunities over the years. (U//AIUO)

<sup>2</sup> See USC Title 5, Part III, Subpart A, Chapter 23, section 2302 (a)(2)(A) subsection (e)(3)(B) and 5 USC section 2302 (8) and (9). Section 2302 is entitled "Prohibited Personnel Practices." See also Title 50, chapter 15, 403q. As OIG is aware, I retained the law firm of Krieger & Zaid in early fall 2003 because I remain unconvinced that CIA wishes to address my concerns equitably or even takes the law seriously. As addressees are aware, as of the date of this memorandum, no normative, corrective, disciplinary, or compensatory action has been taken. Other than to undertake an opaque investigation that has moved at a glacial pace, there is little evidence that CIA wishes to address my concerns equitably. Therefore, I remain determined to seek legal redress if necessary. (U//AIUO)

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includes viewing negatively or taking into account any whistleblower complaint I have written in any internal CIA personnel decision that affects me. They are *prohibited personnel practices*—violations of federal law that seem to have occurred so frequently in my case that they verge on being accepted management behavior at CIA. (U)

**The History of Illegal Retaliation and *Prohibited Personnel Practices* Since 24 March 2003.<sup>3</sup> (U)**

3. December 2002 (rpt 2002) - At approximately this time, I was the target of a special security inquiry to determine if I had passed classified information to unauthorized parties.<sup>4</sup> Such actions are not just contrary to internal CIA regulations and the *Statement on Diversity* but are almost certainly a violation of Federal law, specifically 5 USC 2302 (8) and (9), which describe *prohibited personnel practices* vis-à-vis federal whistleblowers.<sup>5</sup> The extraordinary inquiry was a direct result of a vigorous classification challenge that I had pursued with regard to ref b, itself a separate *Urgent Concern* that had alleged probable violations of law by CIA. The late 2002 security inquiry determined that there was no evidence that I had passed classified information to unauthorized parties.<sup>6</sup> (U//AIUO)

<sup>3</sup>I.e. Generally speaking, a *prohibited personnel practice* under federal law is when a whistleblower is denied opportunities by the bureaucracy simply because he is/was a whistleblower. In essence, it is when management takes into account the fact that an employee has been a whistleblower and views it negatively in its personnel and management decisions. In ref a, dated 24 March 2003, I attempted to document this illegal phenomenon from the late 90s until early 2003. In the current *Urgent Concern*, I attempt to capture what was discussed during a series of conversations and will describe why I believe CIA has engaged in *prohibited personnel practices* more than once. (U//AIUO)

As the conversations were not taped, I can only describe or paraphrase what my interlocutor and I said, to the best of my memory and my contemporaneous notes. Where I use quotes, I do so for emphasis, unless otherwise noted. Please also be aware that at least one suspect incident has not been described in this memorandum. This is because documentation was weak and/or I refuse to interpret every strange interaction with a manager as a personal slight or a legal issue. (U//AIUO)

<sup>4</sup> Although the special security inquiry pre-dates ref a, I only learned of it in December 2003. For this reason it was not included in ref a. The improper security inquiry was briefly described in footnote 5 of Ref c. (U//AIUO)

<sup>5</sup> Internally, the applicable CIA regulation governing classification challenges is AR 70-3i, paragraph 17. CIA formally accepted my original challenge of ref b under AR 70-3i. Within the framework of the USG, all federal whistleblowers enjoy specific legal protections that are not to be violated. 5 USC 2302 (8) (9), the basic Federal statute concerning national security whistleblowers, makes it illegal to, "*take or fail to take, or threaten to fail to take any personnel action against employee or applicant for employment because of a) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation . . .*" In other words, in this specific instance I took advantage of a regulation allowing me to challenge classification (section 1.9 of EO 12958) and CIA mounted a special security inquiry. This seems patently illegal to me. (U//AIUO)

<sup>6</sup> I wish to emphasize that I have not passed classified information to unauthorized parties. It is unclear where the documentary evidence of the special inquiry lurks. It was not in my security file, which I reviewed in spring 2004. Also, during this same time period, i.e. December 2002, my wife was told that she would no longer be allowed to process FOIA requests that dealt with 'M.' This was "for her own good," according to OIM where she worked from spring 1996 until May 2003. Yet, why was CIA's apparent suspicion of me extended to my wife? Was this warranted? What was this about? (U//AIUO)

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4. I learned of the inquiry directly from Iden a, who told me personally of the special personnel action during private conversations I had with her on 23 and 24 December 2003 repeat 2003 and again in January 2004. Iden a herself conducted the inquiry. She had approached me privately because she did not feel that it had been justified and wanted me to know what had happened the previous year—unbeknownst to me. She told me that she had uncovered no evidence whatsoever of wrongdoing on my part and that idle speculation and suspicion on the part of some manager(s) seemed to be what had triggered the request for the inquiry in the first place. I told her that I appreciated her candor, that she was only doing her job given her lack of context, and that she seemed to have been placed in a difficult position by CIA managers. In January 2004, she went further, “I can tell you this, Franz. I doubt if the Office of Security would pursue such an inquiry again. You had done nothing wrong.”<sup>7</sup> (U//AIUO)

5. Comment: Who in CIA thought it proper to mount a special security inquiry? Iden a did not know exactly but speculated that it was either the Office of Information Management, the *Interagency Security Classification Appeals Panel*, or the FBIS front office. But the real question is whether a CIA manager was seeking “dirt” on a whistleblower simply because he challenged the classification of a document in accordance with section 1.9 of Executive Order 12958? Do some CIA managers quietly suggest a security inquiry based on nothing more than idle speculation and/or their dislike of someone who challenges the bureaucracy? Could a normal person not credibly interpret a special security inquiry—based on zero evidence of misconduct—as an attempt to harass a whistleblower? Is it not a “*prohibited personnel practice*” when directed at a federal whistleblower?<sup>8</sup> (U//AIUO)

6. April 28, 2003-late spring 2004: CIA’s Office of Information Management, the office that manages declassification, has continued to deny me the opportunity to challenge the classification of three documents. They are: (U//AIUO)

- ref a, the first *urgent concern* alleging illegal retaliation.
- a Lotus Note dated 28 April 2003 in which OIM explained how a classification challenge in accordance with section 1.9 of EO 12958 would not be allowed.
- ref c, an OIG account of an interview of Franz Boening. (U//AIUO)

<sup>7</sup> Iden a added, “I have seen CIA go after a person for time and attendance fraud when they wish to discredit someone.”

<sup>8</sup> CIA really ought to lighten up. How fragile is the organization if it can’t tolerate a few classification challenges? Unfortunately, it is a common practice within most bureaucracies to attempt to defame the whistleblower and/or deny him rights. This phenomenon is not peculiar to CIA. Actually, I don’t mind routine security investigations—good security is very important—but a security inquiry triggered by a classification challenge? I mean, a classification challenge?! This sort of bureaucratic behavior is unwarranted, smacks of reprisal, and is almost certainly a *prohibited personnel practice*. This is because it is patently illegal for a federal bureaucracy to engage in unwarranted personnel actions—such as a special security inquiry—in response to an employee having merely invoked a federal law, rule or regulation. See 5 USC Sec 2302 (8) and (9). I challenged classification under section 1.9 of Executive Order 12958 and I got a special security inquiry as a result.

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1 CIA's continuing practice of denying most formal classification challenges forces me to ask why I am being denied a right granted to all "authorized holders."<sup>9</sup> Can I not reasonably construe the denial of the right to challenge classification as a "personnel action"—which would make it a *prohibited personnel practice*? Under Executive Order 12958, all documents that have been classified by CIA—even when the document was not solicited by CIA—are challengeable. (U//AIUO)

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7. In late spring-early summer 2003 I was denied the opportunity to [redacted] [redacted] On or about 1 May 2003, a senior CTC officer, Iden aa, asked me if I would be available to [redacted] from a very prominent Middle Eastern group. Iden aa, who has known me for about 15 years, chanced into me in an OHB hallway and quickly asked if I could "still speak good Arabic" and whether I would be interested in doing [redacted] After I immediately expressed my willingness to assist, he explained that there was a critical need for experienced officers who could speak fluent Arabic and said that his subordinate, Iden aaa, would be in contact with me. Some weeks later, during the ensuing exchange with Iden aaa, it was decided that I would not be allowed to [redacted] although I remained eager to assist. No persuasive explanation for CTC's change of attitude was ever offered. (U//AIUO) (S) COL 5-03

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8. Comment: The exchange with CTC was particularly odd given that Iden aaa had given me the distinct impression that he did not want my participation, even though it had been his superior Iden aa who had suggested the idea. But why the about-face? Had someone in CTC decided that a person with my background would not be suitable for the sensitive task of [redacted] Even if the officer was particularly well qualified [on paper] to engage in [redacted] Had any CTC manager taken into account my previous whistleblowing in determining my suitability? If so, it would probably constitute a violation of law. Although I admit that I don't have conclusive answers, I found it quite striking that an opportunity to [redacted] which had come from a senior CTC officer had been so quickly withdrawn. I ask that you investigate this issue and ensure that my previous whistleblowing was not taken into account in this personnel decision.<sup>10</sup> (U//AIUO) (S) COL 5-03

9. Iden b incident: On August 28, 2003, I had a job interview with Iden b, a branch chief in CTC.<sup>11</sup> Iden b and his deputy, Iden c, said to me that the real issue with taking me into their branch was my "hall file." [exact words]<sup>12</sup> Admittedly, Iden b did not use the word "whistleblower" but indicated to me his concern with my previous actions in

<sup>9</sup> I am an "authorized holder" with regard to these documents. I have enjoyed S/Ts clearances, granted and renewed by CIA itself, for 23+ years.

<sup>10</sup> In spring 2004, numerous news accounts have appeared that deal with the treatment of detainees, including those from al-Qa'ida, in US custody. Many of the apparent abuses appear to have occurred in 2003. (U//AIUO)

<sup>11</sup> This paragraph should be read in conjunction with a summary of the interview that was reported to OIG in a Lotus Note on 9 September 2003. (U//AIUO)

<sup>12</sup> Iden b seems like a decent guy although I don't know him well. Iden c is an old friend of mine and an honest, competent officer—very solid. He spoke candidly in August 2003 and later told me during a private phone conversation on the afternoon of 17 October 2003. "The whole system is based on hall files. Still, it is not the way the bureaucracy should run." (U//AIUO)

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another way. After remarking that he expected bureaucratic resistance at the PMC to getting me into his branch, I asked out loud why this would be the case? Iden b said very slowly: "Let's just say that everyone knows your name and what 'Franz Boening' has done. But, we are willing to take a 'chance' with you."<sup>13</sup> He continued, "The PMC is too careful to say anything directly about your 'activities,' but it can always simply claim that you are 'not qualified' and you will not be able to prove anything."<sup>14</sup> Iden c immediately chimed in, "Let's say that it is more a matter of your 'hall file.'"<sup>15</sup> Asked whether I could tdy, in principle, for his branch, Iden b responded, "If you do OK, after about three months, we'll try to 'sneak you out' on a tdy and see if anyone complains."<sup>16</sup> (U//AIUO)

10. It was clear to me that Iden b was making decisions based on the "hall file." The hall file, as some are aware, refers to the informal reputation that an officer acquires at CIA and is usually separate from his/her objective qualifications, achievements, and overall performance. Given the fact that I have a pretty consistent record of strong professional performance (some of it outstanding), does CIA expect me to believe that no manager takes into account my whistleblowing when it comes to me? Especially after remaining in grade for nearly 11 years?<sup>17</sup> Only a fool would believe this. Because the main component of my "hall file" is the fact that I have been a whistleblower several times. This has caused the "hall file" to assume—for some managers—an importance far greater than my objective professional performance. It has had a determining effect on their attitude toward me. (U//AIUO)

11. On 11 September 2003, I inquired from Iden d about the possibility of assisting in a tdy capacity in Iraq and included a brief summary of my career and my qualifications.<sup>18</sup> A personal friend, Iden e, had spoken with Iden d by telephone in advance of my contact with her. He told me that Iden d had been enthusiastic about finding someone with my

<sup>13</sup> Or "risk." One of these two words was uttered. (U//AIUO)

<sup>14</sup> This sentence was inadvertently not recorded in my 9/9/2003 Lotus Note to OIG. I recalled it later and wish to include it in this memorandum. It was definitely uttered by Iden b and I encourage you to ask him about it.

<sup>15</sup> Iden b decided he wanted me in his branch anyway, "baggage" and all. He offered me a job with no particular responsibilities, one that could easily be filled by any new career trainee. I thought about it very briefly and declined. (U//AIUO)

<sup>16</sup> Compare with paragraphs 16, 24, and 25 of ref a and with Iden g's remarks in this complaint. CIA managers have signaled to me more than once over the years that they are very careful about allowing me to travel. Now, what had I possibly done wrong that has caused some managers to be skittish? When I was a case officer, (that is, before I had ever written a whistleblower complaint), I never encountered any such hesitancy to allow me to travel. (U//AIUO)

<sup>17</sup> Nearly eleven years and counting. This time-in-grade figure is almost four times longer than my average promotion rate from EOD to 1993. Significantly, it is also approximately 200% longer than average Agency time-in-grade for a GS-13. Juxtapose this figure against a professional reputation that includes regular speaking engagements around the intelligence, foreign policy, and law enforcement community and fluency in a hard language/agent experience that few DO officers can match. (U//AIUO)

<sup>18</sup> I remain a fluent Arabic speaker (3+, 3+, 3+), experienced agent handler, and pioneered for CIA the intelligence exploitation of certain [redacted]. I also tdy'd to Iraq a couple of times after the first Gulf War. (U//AIUO)

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qualifications.<sup>19</sup> Yet, during my ensuing Lotus Note correspondence with Iden d—after she had had time to review my file—she claimed that NE Division preferred to send only officers “who could spend one year in Iraq” and that there was no need for any tdy services.<sup>20</sup> As I was serious about assisting, I told her that I knew for a fact that NE Division and the CIA continued to send officers to Iraq on three-month tdys and asked her for a fuller explanation. Obviously embarrassed, she referred me to Iden g to discuss the issue directly.<sup>21</sup> (U//AIUO)

12. I assert that Iden d had almost certainly reflexively discriminated against me after she had learned of my professional history. Yet, such discrimination is a *prohibited personnel practice*.<sup>22</sup> Under federal law, it is illegal to “discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant.” Therefore, from my perspective, how did my previous whistleblowing diminish my ability to serve in a tdy capacity in Iraq? How was this relevant? How did whistleblowing disqualify me from debriefing an Arabic-speaking agent or handling any other debriefing? Would a US Army officer not pay attention to me because I had been a whistleblower? Why was a fluent Arabic speaker with years of operational experience—in an organization where such individuals are in precious short supply—seemingly intentionally misled? Why? (U//AIUO)

13. The answer came later. At 1330 on 23 September I met alone with Iden g for about 40 minutes in the latter’s Hqs office. After exchanging pleasantries and inquiring about one another’s families, I asked whether I could tdy to Iraq to assist NE Division and reminded him of my skills. I told him that I knew for a fact that what Iden d had told me about “no more three-month tdy’s” was untrue and that it irritated me that I had been lied to. After pausing and shifting in his seat, Iden g said: “Franz, you’re right. It is not true that we no longer send officers on 90-day tdys to Iraq and Iden d should not have claimed this. You have to understand, though, you have an absolutely ‘horrible reputation’ [exact words used by Iden g] in NE Division. But I want you know that I have always held you in ‘good stead’ [exact words] and have always had a high professional opinion of you.” With irritation in my voice, I responded to Iden g’s assertion about my supposed ‘horrible reputation’: “Based on what?! [my exact words]. My performance appraisal reports have always been good to excellent and I developed a

<sup>19</sup> Iden e was initially skeptical about my evaluation of CIA’s willingness to engage in *prohibited personnel practices*. He came to be a believer, however. During this period, I also spoke with Iden f directly about the possibility of travel to Iraq and the latter confirmed to me that NE Division continued to send officers on 60-90 day tdys. Separately, I have spoken with other officers who have returned from Iraq and who told me that “the office is filled with tdyers--” the vast majority of whom know no Arabic! Thus, it is exceedingly easy to confirm that Iraq is filled with tdy-ers. (U//AIUO)

<sup>20</sup> Again, tdy officers are the norm in Baghdad. (U//AIUO)

<sup>21</sup> The issue was discussed via Lotus Notes with Iden d. As for Iden g, we served in the Middle East together 20 years ago and became fast and solid friends. Although we fell out of contact over the years, our time there obviously made Iden g much more inclined to level with me. He is a pretty honest guy. (U//AIUO)

<sup>22</sup> Reread Section 2302 (8) and (9) which describes in detail prohibited personnel practices vis-à-vis federal whistleblowers. For the record, Iden e considered Iden d’s claim “breathtaking in the literal sense” as he had learned officially from NE Division that it remained in dire need of qualified officers on the ground in Iraq. (U//AIUO)



*whole new field of intelligence exploitation for CIA. Few people have done this. Instead of relying on hearsay, why don't you allow me to tell you directly why I have this 'reputation.'"* I then proceeded to tell Iden g, in very broad outline, of CIA's apparent lies to a congressman in 1998, for which the DCI later apologized.<sup>23</sup> I reminded Iden g that I had broken no laws in filing my complaints and that the bureaucracy should not take them into account. Iden g listened intently, in seemingly non-judgmental fashion, then said: *"Look, there are ways to express your displeasure inside the bureaucracy and then there is 'your way.'"*<sup>24</sup> *I think I have been able to resist bad conduct. That said, in your case, I think that you have suffered from bad managers."* Iden g continued, *"The real problem with sending you to Iraq, though, is we can't have someone who might write a memorandum because of something he sees or doesn't like while in country. The war on terrorism has changed the ground rules. We need people who obey immediately—not after 10 minutes of reflection."*<sup>25</sup> I responded: *"I know that [i.e. that there is a new determination to fight terrorism]—but remember, the law permitted me to write urgent concerns. Besides, I am volunteering. Did you know that in fall 2002 NE Division actually told me that I was 'beneath the current standard for NE officers in terms of training and experience?'"* Iden g responded, *"That is not true [i.e., that you are beneath NE's skill level]. The truth is there are a lot of places where you could be of great assistance given your skills. Perhaps we could use you in a place like Mosul. There are mostly young officers serving in Iraq and experience is needed."* (U//AIUO)

14. Iden g tried to reduce the significance of what I had been told by Iden d, perhaps in an attempt to reduce my irritation. Speaking slowly and carefully while shifting in his chair, he said, *"Look, Franz, when someone around here hears your name, even if they don't know the exact details of your past—maybe they only know a little bit about you [Iden g raised his hand and gestured with his thumb and index finger]—they just reflexively shun you."* Although Iden g tried to empathize, his demeanor suggested that he found Iden d's reaction to be as understandable and "no big deal." He continued, *"I have to be honest . . . no one here wants you. I do not agree with them, though. I would like nothing better than to bring you back to the division, to prove to your many critics that you are a good officer, and possibly to give you a double promotion if you do well. Give me a few days to think about it—I plan to pray for guidance—and I will get back to you by Friday [26 September] with my decision. If you go to Iraq, you will be granted no supervisory role and I will brief your superior about you accordingly. If you do well,*

<sup>23</sup> This *Urgent Concern* was written drafted immediately after the passage of the Whistleblower Provision.

<sup>24</sup> Compare with paragraph 26, ref a. In the above conversation, Iden g was signaling to me that he did not believe writing an *urgent concern* was an acceptable way to voice disagreement. Yet, if CIA does not think whistleblowing is an 'acceptable way,' I suggest CIA raise the issue with Congress and the President. After all, they make the law. Read further. (U//AIUO)

<sup>25</sup> Perhaps it is well and good that some people are willing to write about "things they don't like." In May 2004, numerous stories have appeared in the world press, including the *Washington Post*, the *New York Times* and *USA Today*, about abuse of Iraqi prisoners by US personnel at Abu Ghayb Prison outside Baghdad. The *Washington Post* stated that CIA's Inspector General's Office was investigating CIA's possible connection to these incidents. Yet, one thing is certain—if I had witnessed clear violations of accepted international conduct vis-à-vis prisoners of war and civilians, I would have reported it immediately to CIA authorities. (U//AIUO)

*we'll bring you back to the NE Division.*<sup>26</sup> The conversation ended in friendly fashion shortly thereafter. Iden g got back to me several weeks later via a friendly Lotus Note. He said that I could serve in Iraq but only if I agreed to stay 6-12 months.<sup>27</sup> (U//AIUO)

15. Comment: Did Iden g engage in a *prohibited personnel practice*? Judge for yourself.<sup>28</sup> A basic federal whistleblower protection says that it is illegal to, "*take or fail to take or threaten to fail to take any personnel action against any employee or applicant for employment because of a) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation. . .*" Now, whistleblowing is legal under the law . . . I am a whistleblower. . . and an assignment to Iraq is a personnel action. Plus, scores of CIA officers are or have been considered for 90-day assignments (or even less; this is exceedingly easy to prove). Yet clearly, my previous whistleblowing did enter into Iden g's calculations in a big way. He said so unambiguously. Iden g did indeed "fail to take an action"—such as allowing a tdy without conditions—simply because I had been a whistleblower. Iden g's remarks are one of the clearest indications yet that I am not imagining this problem and that violations of federal whistleblower protections are endemic inside the bureaucracy. In addition, I claim that Iden d's intentionally misleading statement to me about "no more 90-day tdy's" was in keeping with NE Division's longer policy of denying me opportunity based on my "hall file." She too engaged in a *prohibited personnel practice*. The law says that it is illegal to "*discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee . . .*" Yet, how could my previous whistleblowing make me ineligible for 90-day tdy's (that is, without violating the law)? Why did Iden d seek to mislead me? Remember, Iden g directly contradicted Iden d about the possibility and length of tdy's to Iraq and he directly contradicted NE Division's claim in October 2002 that I was "*below our threshold for necessary skills and being current in terms of training/experience.*" His candid remarks put into context paragraphs 32-33 of ref a—and I appreciated his honesty.<sup>29</sup> (U//AIUO)

<sup>26</sup> This revealing conversation with an old friend—even an honest, capable guy like Iden g—speaks volumes about how CIA really works. "Hall files," not objective performance, decide employee futures. Iden g's comments mirrored Iden c's. And, years of operational experience, fluent Arabic, developing an entirely new set of intelligence sources for CIA, mentoring young officers, and being a recognized expert around the IC in an esoteric field, all counted for nothing. Moreover, Iden g, a former human resources manager (!), signaled to me that he needed to "rehabilitate" me despite being reminded of the law, the occasional appropriateness of whistleblowing, and of my productivity at FBIS! His further comment that he would "pray for guidance" was particularly annoying. (What's next, tea leaves?) In view of above, how can CIA possibly think that my whistleblowing has never been taken into account by some managers? As far as I am concerned, it is axiomatic that it has been taken into account. And, lest we forget, Iden d consciously sought to mislead me. (U//AIUO)

<sup>27</sup> I was initially happy that Iden g did not rule me out completely, as some other officers had done. He opened a door—albeit only part way. Yet, upon reflection, even this solid officer proved to me that he was willing to take extraneous and illegal factors into account in his personnel decision. (U//AIUO)

<sup>28</sup> Here it is necessary for me to detach myself from my earlier warm friendship with Iden g. Our time abroad inclines me to treat him gently, yet the conduct in question is almost certainly illegal. Despite this, Iden g is much more honest than most officers and he occupies his current position mostly due to competence. Although he is a good person, he appears either ignorant of the law or unwilling to take it seriously. (U//AIUO)

<sup>29</sup> It is worth noting here that the OIG investigators who investigated the October 2002 assertion by NE Division that I was "below their current standards in terms of training and experience" clearly were either

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16. On 26 September 2003, Iden h publicly humiliated me during a visit by the Executive Director of CIA to [redacted]. This incident is described in detail in ref d. In a nutshell, Iden h publicly told a number of officers, while I stood 10 feet away, that a junior officer with one year of experience had done "the groundbreaking work" in a promising new intelligence field and had developed a "whole new product line." Neither claim was true—I had pioneered the entire new field for CIA, had mapped and assessed the constellation of sources, and had suggested the new product.<sup>30</sup> Thus, this act of public humiliation of federal whistleblower almost certainly constituted a *prohibited personnel practice* under Section 2302. The law says that it is illegal to "discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others..." (U//AIUO) ~~(e) OCT 03~~

17. Iden h's treatment of me was one of several extremely irritating incidents that I have endured since 1998 and demonstrates to me, beyond a shadow of a doubt, that some managers will discriminate against employees whose personal views and criticisms of CIA they do not like.<sup>31</sup> Iden h knew that I was a whistleblower—I had told him so—and had responded to me both orally and in written comments in June 2003, that he takes into account my criticisms of CIA in his management decisions. Moreover, he partially bases his promotion decisions on the "hall file" of FBIS employees, in clear contradiction of

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too credulous or didn't dig deep enough. On August 13, 2003, they told me informally that NE Division's written comment about my "lack of qualifications" was actually a "routine reply." This contention is nonsense. I did not believe this then and I do not believe it now—it was not at all a "routine reply." I think it is clear from my conversation with Iden g that the OIG investigators were misled by NE Division, perhaps as a way for the latter to escape or deflect culpability for illegal behavior. Iden g's comments directly demonstrate that the OIG investigators must be more vigilant and less gullible. Because when all is said and done, a written reply from an area division should make sense. (U//AIUO)

In fact, on 13 August 2003, the OIG investigators gave me the distinct impression of seeking to minimize the significance of conduct (including threats) that they had preliminarily determined had taken place—even if such threats against federal whistleblowers are, in themselves, *prohibited personnel practices* and thus violations of law. For instance, OIG acknowledged to me that Iden k had made most of the threatening remarks that I had alleged in ref a but "may have wanted to help you." Shortly thereafter, a well-meaning OIG investigator even told me that that she could personally understand why Iden k had told me to "shut up," which the OIG officer considered sound advice! My description of the 13 August OIG meeting is recorded in a Lotus Note dated 15 August 2003.

Finally, I find it striking that in general, the tendency of NE Division (and FBIS) to take into account my background is greater than among other elements of CIA. This is because CIA is a big place and my name is better known in certain offices than in others. In other words, where people know me, they do seem to take my previous whistleblowing into account in their personnel decisions. (U//AIUO)

<sup>30</sup> See ref d grievance. My irritation assumes we ignore the unseemliness of choosing a junior employee with one-year of experience over the veteran officer who developed the program to give the briefing. Iden h did this intentionally, as he knew the truth of the matter. (U//AIUO)

<sup>31</sup> Other extremely irritating incidents at FBIS have included Iden k explicit threat on 1 March 2002 to never promote me if I engaged in further whistleblowing. This was a clear *prohibited personnel practice* under federal law. Likewise, Iden o's suggestion on 25 October 2002 that I was not fit to talk to young officers was extremely annoying. She repeated the same general suggestion on 10 March 2004, without supplying details of my alleged remarks. (U//AIUO)

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CIA human resources policies and Agency regulation [redacted]<sup>32</sup> (If CIA wants to understand why I retained lawyers only ca 1 October 2003, I invite you to reread this and paragraph 16.) (U//AIUO) (C) (MIS 1-03)

18. On 10 March 2004, I was accused by Iden o, against whom I had filed a grievance in January 2003, of creating a "negative atmosphere" for unnamed young officers and—in the most outrageous piece of chicanery experienced since 1998—of "threatening a colleague with a little yellow 'Post-it' note."<sup>33</sup> The history of this strange story, which includes the insinuation that I had physically threatened a colleague, is contained in several Lotus Notes dated 12 March 2004, in a 6 January 2004 memorandum, and in a memorandum for the record/with rebuttal. It suffices to say that a senior FBIS manager insinuated to me, in essence, that I was "disrupting" the minds and morale of unnamed young officers based on unspecified comments I had made. Moreover, maybe Franz Boening was a closet felon! The "disruption of young officers' morale" allegedly occurred as a result of "negative" assessments I have made about various aspects of CIA's performance.<sup>34</sup> Likewise, the Post-it note form of Franz Boening's "negative behavior" rested on the thinnest of "evidence" combined with a healthy dose of sophistry. Consequently, could a person in my position not reasonably ask whether FBIS management sought to intentionally harass me? (U//AIUO)

19. The Case of the Yellow Post-it Note: The note in question was addressed by me to Iden p on 10 December 2003, a senior editor/analyst at FBIS, who reported to Iden o her "perception" that I had physically "threatened" her with the note below. I invite the reader to judge for himself/herself. The exact text of the note follows in italics. My elucidating comments are in brackets: (U//AIUO)

[Begin text]

- *Iden p, 10:15 am, 12/10/2001* [The note was addressed to Iden p; the date of 2001 was due to my bad writing. I meant to write 2003.]
- *This is what I described to you yesterday.*
- *I think it is formatted the way want it [sic].*
- *Notes: Let's do one set of edits (not 2-3).*
- *Be consistent; (I'll try to be).*

<sup>32</sup> I will try to produce a Powerpoint from Iden h, which suggests that he considers "hall files" carefully. Yet, if this is the case, it necessarily means that a powerful psychological bias will always exist against a whistleblower.

How does CIA explain such improper managerial conduct? Also, since the paragraph 16 incident, Iden h has denied me the opportunity to travel to brief three foreign liaison services that had requested me by name. This occurred in early 2004. While this latter decision may be his management prerogative, it seems equally possible that it was a direct response to the grievance I filed against him in ref d. (U//AIUO)

<sup>33</sup> You know, those little yellow notes made by 3M with the sticky backs? Please do not laugh; the accusation was quite serious. Iden o endorsed the remarks of Iden r who called the note an example of my "negative behavior." (U//AIUO)

<sup>34</sup> I admit that I have perhaps influenced how young officers understand the intelligence business. But, what of it? Personally, my morale has been "disrupted" by CIA's recurring intelligence failures abroad, the ineptitude of some managers, and the fact the so few senior officers speak Arabic in a world where this skill is critical. In fact, it seems that the US Congress cannot stop talking about US intelligence failures. In fact, what can be possibly be wrong with examining the reasons for intelligence failure? (U//AIUO)

- *Let's get it out by Friday.*
- *Franz.*

[End text] (U//AIUO)

After receiving this note, Iden p complained to Iden o that she had felt "threatened" by me. Iden o and Iden r in turn tacitly endorsed Iden p by calling it an example of my "negative behavior" towards others in the office. Iden o said that she felt compelled to "address the issue" with me because it was her duty "as a manager." I vigorously denied to all parties aware of this issue that I had threatened anyone. During a follow-up meeting on 15 March, both Idens o and r declined to disassociate themselves from Iden p's ominous interpretation of the Post-it even though I gave both officers two opportunities to do so. Both said, "we don't know the context," (ergo, maybe Iden o's interpretation is accurate). I immediately challenged both officers to take the Post-it note to CIA's Office of Security—or better yet to the Loudoun County Police Department—if they felt strongly about the "threat" it contained. They declined, without comment.<sup>35</sup> (U//AIUO)

20. Comment: What is next? To be accused by management of planning an assault because I keep a plastic butter knife in the drawer? Of robbing the coffee fund? Because if certain FBIS managers tacitly subscribed to Iden o's silly and paranoid interpretation of the Post-it note—and they did—it is no longer management. Leveling baseless accusations of what amounts to criminal conduct is very serious matter. It can rightly be called intentional harassment, from my optic. It suffices to say that I do not like CIA managers to insinuate that I am a violent person or that I would commit a criminal act. This is malicious character assassination when done without a shred of evidence. (U//AIUO)

21. The Negative Effect on the Intelligence Mission: After the weird incident described in paragraphs 19 and 20, Iden p compounded the phenomenon of seeming harassment by refusing to allow four draft reports I had submitted for edit to be released as formal FBIS intelligence reports. All of her de facto refusals occurred after I had vigorously challenged her paranoia in late March 2004 and showed the Post-it note to the Office of Security.<sup>36</sup> The draft reports dealt with high-priority designated USG terrorist groups, to include al-Qa'ida and HAMAS. In all cases, other offices of CIA or substantive experts within FBIS had endorsed the value of the drafts. In the most egregious case, Iden p, almost certainly out of personal pique, nixed the production of an important report that was to be used by Federal Bureau of Investigation. Moreover, she did this even after I

<sup>35</sup> Of course, nothing prevented me from sharing the note with the security officer at [redacted] Iden t. I gave her some background to my case on 12 March and a copy of the text of the Post-it note, as well as an accompanying memo, on 17 March 2004. A few days later, on or about 25 March, she indicated to me that she could discern no "threat" in note and was surprised that anyone else could. (U//AIUO) *loc 1-03*

<sup>36</sup> I have written literally scores of reports, foreign media analyses, monitor reports, and operational alerts (OA's) since I came to FBIS in 1999. (I proposed the concept of the OA in late spring 2002, which FBIS then adopted some months later and which has become a useful product for the IC.) Most of them were required to pass through Iden p's editing. Yet, prior to spring 2004 it had been extremely rare for Iden p to fundamentally question the intelligence value of a draft that I had submitted. (U//AIUO)

had specifically told her that the information demanded a formal report because the FBI planned to use it to launch an investigation.<sup>37</sup> (U//AIUO)

22. Action Requested: Kindly investigate and solve the problems described above—and finish CIA's investigation of ref b. It is painfully clear to me that the CIA bureaucracy does not function the way it is supposed to, insofar as it has allowed some managers to engage in seeming *prohibited personnel practices* vis-à-vis a federal whistleblower. My previous whistleblowing has been quietly, yet illegally taken into account in numerous personnel decisions over the years.<sup>38</sup> I contend that some managers think it is OK to discriminate against a whistleblower because they have "deniability" and because such cases can be difficult to prove.<sup>39</sup> (U//AIUO)

23. CIA will not be let off the hook until it resolves this problem equitably. I have been threatened, told that I am unfit to talk to young officers, publicly humiliated, "prayed for," and denied other opportunities too many times for all these incidents to be coincidences. Moreover, two CIA staff officers have done this with explicit reference to my previous whistleblower complaints and several others have made negative allusions to my supposed "hall file." This has all taken place while I have made important intelligence contributions that have been largely ignored and within a framework of formal laws that are designed to protect federal whistleblowers.<sup>40</sup>

24. I ask you that resolve this complaint fairly and with a certain measure of urgency.<sup>41</sup> In the meantime, please know that I appreciate your attention to this matter.

Respectfully,  
Franz Boening

<sup>37</sup> On the very day that she did this John Brennan of Terrorism Threat Integration Center sought to reassure the 9/11 Congressional Commission that CIA was doing everything possible to work with other elements of the government. Therefore, if CIA management worries about nothing else in the memorandum, I hope that it appreciates the lunacy of allowing a vindictive manager to harass an employee—out of pure personal pique—to the point that the intelligence mission is tangibly damaged. Such managerial conduct is absolutely unconscionable. It is even worse when other FBIS managers who witnessed the incident did not intervene to facilitate the production of actionable intelligence. Significantly, after I recorded my intention to report to outside CIA authorities the unconscionable hindering of intelligence reports—seemingly based on nothing more than Iden p's irritation—the ill-conceived practice stopped. By 30 April, I was again able to produce formal intelligence. (U//AIUO)

<sup>38</sup> Moreover, nearly all CIA employees know intuitively that whistleblowing entails professional risks and friends have acknowledged to me privately that they believe my allegations have merit. (U//AIUO)

<sup>39</sup> If certain managers believe this, then I will do my level best to prove them wrong. After all, if we do not attempt to enforce federal law, what good is it? Do we wish to ignore the law of the land? For my part, I will not hesitate to document other *prohibited personnel practices* should they occur.

<sup>40</sup> In late April 2004, I obtained a position in TTIC. The military officer who recommended me for the position as a senior analyst hired me without any hesitation, almost certainly because he was unaware of my previous whistleblowing and thus focused, appropriately, on objective qualifications. I ask you to contrast this officer's behavior with that of some of the CIA officers described in this memorandum.

<sup>41</sup> I apologize for the dense prose of this complaint. There was much to say and I did not want to ignore important details or context.