

Saturday, April 18, 2020

**THE CASE AGAINST CHARLES ANTHONY MALOUFF, JR**

**CASE REVIEW**

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THREAT MITIGATION AND ANALYSIS SERVICE, LLC

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## Introduction

Back in November 2019, I began speaking with Mr. Charles Anthony Malouff, Jr., hereinafter, referred to as Charlie about his issues with the judicial system. In full disclosure, I have known Charlie for almost 15 years, my wife (Linda A.M. Carter-Calhoun) has known him since they attended high school together back in the 70's. We saw Charlie in person once since I have known him, and my wife has probably seen him only once or twice since high school. When I met Charlie in person, the first thing that struck me was that he was a very driven and patriotic man. I recall that he was excited about a product his company was involved with that could stop the penetration of firearm rounds (bullet proof material). To say that I was impressed would be an understatement—as former soldier and defense contractor at the time, this news was exciting! We stayed in email contact for a while. Then, as often happens, the contact became less frequent and then not at all. The years went by and my wife asked a former classmate about Charlie and that's when she learned that Charlie had been incarcerated for "fraudulent" activities. We were shocked and simply couldn't believe it. Of course, we did what most people do, we googled his name and saw the media reports—it did not look good. Spring forward a year or so and we made contact with Charlie again. We generally avoided the subject of what happened until November of last year. Charlie and I began to talk about our lives since we last met. I explained to him that I was a still a defense contractor but that my wife and I had started our own company: Threat Mitigation and Analysis Service, LLC (TMAS). Charlie told me about his issues with the judicial system. He told me that he had not done the things he was accused of and that there was a conspiracy of sorts that lead to his incarceration. Charlie then told me something that floored me—he was convicted not only once but three times, twice in Federal Court and once by the State of Texas. While I did not admit it to Charlie, I was thinking he was saying the same thing many guilty people say: "I am innocent." As we continued to chat over the next few days and weeks, I began to take an active interest in some of the things he revealed. Then, in December 2019, I offered to take Charlie on as a client. Charlie was in the midst of preparing a request for a Presidential Pardon and I offered to support his effort. I explained to Charlie that I would not be looking at whether he was guilty or innocent of the accusations; instead, I would be looking for "red flags" demonstrating that the judgements against him were levied based upon faulty information, ineffectual counsel, or poor (or even biased) investigative

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practices. As I read the materials associated with all three cases, I found multiple blatant issues that should never have allowed any of these cases to proceed. Ultimately, due to time constraints, I decided to focus TMAS efforts to just looking at the first federal offense. As you will see, there would not have been a second federal offense without the first—the second offense was caused by the Constitutional restrictions placed upon people who have been found guilty of a federal offense. Regardless, our findings will clearly show that the first conviction should never have happened.

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### Bottom-Line Upfront

Charlie was an active law enforcement officer, Certified Master Instructor for an explosive manufacturer, and Coast Guard member. He was charged and found guilty in 2007 for the unlawful transfer of weapons, and in 2012 for the unlawful felony possession of a firearm (this first case happened while he was an active police officer and Coast Guard Activated Reserve member). A request for a Presidential Pardon should be awarded to Charles Anthony Malouf, Jr. and the case then retried or simply dismissed for the following reasons:

1. Charlie is a disabled veteran, Purple Heart and Silver Star recipient, with 29 years of combined law enforcement and military service to his country. His word should have meant something.
2. Charlie confessed that he ultimately gave up and pleaded guilty under duress.
3. Charlie had inadequate/ineffective assistance of counsel. His primary attorney literally told him that this case was beyond what he felt he could do. Then, during the case, his lawyer was involved in a violent and disabling motorcycle accident. His attorney literally attended court while being under heavy prescription drugs. The judge, Judge Hittner, a senior US District Judge, for the Southern District of Texas,<sup>1</sup> physically saw the attorney's condition and asked why he was even in court.<sup>1</sup> Thus, the judge KNEW there was an issue and did NOT stop the proceedings.
4. Charlie's second lawyer, who also worked at the Federal Public Defender's Office as a public defender and was supposed to have acted in an advisory role while his first lawyer was out, had no experience working these kinds of cases and refused to listen to potentially new exonerating evidence.

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<sup>1</sup> <https://www.txs.uscourts.gov/page/united-states-district-judge-david-hittner>

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5. An FBI agent may have vindictively “pushed” to have Charlie brought up on charges. Recent media reports have shown that senior FBI personnel have massaged information to get their desired outcome.<sup>2</sup>
6. Charlie was not at an event in which a Federal Agent was wounded—but, was convicted none-the-less.
7. Before and during the trial, Charlie was led to believe (by his attorney) at most he would have been charged with a mid-demeanor, not a felony.
8. Charlie was concerned about his aged parents.
9. Charlie was never told that he could withdraw a plea if done so before sentencing.
10. Charlie still is not sure how his name ever came up for the investigation.
11. Charlie was a law enforcement officer, not an attorney and thus did not completely understand the ramifications of pleading guilty.
12. A similar case (though Charlie and Vest did not know each other) was being heard while Charlie’s case was going on that had a much different outcome—the officer, Illinois State Police SGT, James V. Vest, who was charged with the possession and transfer of an automatic rifle, in that case, won.<sup>ii</sup> The Court found that all three Counts against Vest must be dismissed because the laws/statutes were unconstitutionally vague as applied to Vest in his capacity while serving as a police officer, equipment officer and lead instructor. While Charlie’s case involved flashbangs instead of an automatic weapon, the similarities are startling—Charlie was also a police officer, equipment officer, and lead instructor.
13. Williams was found guilty of misusing a “flashbang” device that injured a federal agent at a party. Charlie was found guilty of the unlawful transfer of weapons. Charlie was not at the party. Charlie did not provide the weapon used by Williams.
14. Charlie had permission by his superiors to transport flashbangs and other weapons used during training. Charlie was also a certified trainer for the training activities involving the

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<sup>2</sup> <https://www.washingtontimes.com/news/2020/apr/10/fbi-used-russian-disinformation-launch-investigati/>

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use of flashbangs. Charlie was a licensed Texas Peace Officer and certified flashbang and firearms instructor. He was certified by the State of Texas, FBI, and Precision (the company that made the devices).

15. During the training exercise involving flashbang devices, Charlie was told to report to the Coast Guard. Charlie needed a place to store the training devices, but the Coast Guard did not have a suitable facility. Williams claimed that his office met the legal criteria for the storage of flashbangs and other weapons and volunteered to store the weapons. Considering that he was a former ATF agent, Williams was aware of the storage requirements.<sup>iii</sup> Regardless, Charlie never gave the devices to Williams; he left them with the training coordinators at the training site. Calls were made by Williams, the training staff, and the weapon manufacture about the best way to store the weapons.
16. Charlie was the SWAT Instructor for Cedar park Texas. He also responded as the PRIMARY explosives expert on multiple occasions in Cedar park. Since 1990, Charlie was the Firearms/Equipment Officer for every department he worked.<sup>iv</sup> Thus, he was qualified to use, store, and transport flashbang devices.<sup>3</sup> Finally, all training classes were sanctioned and registered with the State of Texas Commission on Law Enforcement Standards and Education Training Division.
17. ATF Agent Bock did NOT read Charlie his Miranda Rights<sup>v</sup> but had Charlie mention that he transferred weapons from his office to the training site—which was information later used against Charlie—this is a clear Miranda violation.

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<sup>3</sup> [https://www.att-tactical.com/att\\_expl\\_mag\\_flash-bang\\_day\\_box.html](https://www.att-tactical.com/att_expl_mag_flash-bang_day_box.html)

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### Who is Robert Calhoun and Linda Carter-Calhoun (President/VP of TMAS)

My name is Robert Calhoun and my wife's name is Linda Carter-Calhoun. We are the owners of TMAS and the least important factors of this document. However, our backgrounds have provided us with very unique skillsets that allow us to research and analyze information from perspectives that most people cannot. I am a former US Army Counterintelligence Special Agent and DoD contractor with over 35 years of combined experience. I have conducted counterespionage investigations and later as a contractor, conducted analysis of espionage and terrorism cases. It was my job to look for flags or other evidence to either prove, dispute, or mitigate allegations against the subjects of those crimes. Linda was a US Government intelligence employee and DoD contractor also with 35 years of experience. Linda has provided intelligence and analytical support to some of the most sensitive and elite organizations in the military. Thus, our combined 70 years of experience has provided us with the tools necessary to review a case as complicated as Charlie's. Now with that said, neither of us is a lawyer, law enforcement officer, or judge. Our findings are based upon our analysis of the information provided by Charlie, court transcripts, and other open source media.

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### Who is Charlie?

Charlie is the founder of CM Energies (CME) a renewable wind energy company, honorably retired law enforcement officer (retired as the Chief of a Police Department), Coast Guard Sea Marshal and Air Force veteran, disabled veteran, Purple Heart<sup>vi</sup> and Silver Star recipient, with 29 years of combined service to his country. Charlie is also a third generation Lebanese American who has been the very model of what it means to be a good citizen. He is also an environmentalist and advocate of clean energy. Charlie simply wants to clear his good name and to be able to exercise his rights per the US Constitution that he fought and bled for while serving in the military and as a law enforcement officer. As for his federal offenses, one was in 2007 for the unlawful transfer of weapons, and the second in 2012 for the possession of a firearm and destructive devices. As a result of the 2007 arrest, as part of his probation, Charlie was barred from having possession of firearms and explosive materials (however, he previously owned a large gun collection and as part of the 2007 case, he was allowed, by the Court, to keep his collection with the understanding he could not “physically” possess them.<sup>4</sup>). Thus, he was only found guilty in 2012 because information pertaining to a state case was found in safes containing his gun collection. The safes containing the gun collection were found at his co-defendant’s (state case) home—11 miles from Charlie’s residence. The prosecution in the state case made the assertion that the only way the documents and/or other items could have gotten into those safes is for Charlie to have put them there.<sup>5, 6, 7, 8</sup>

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<sup>4</sup> This information was provided to me, the author, by Charlie. I did not personally see the agreement.

<sup>5</sup> Travis-D-1-DC-13-904021-RR-VOL019 (pages 118-119)

<sup>6</sup> Travis-D-1-DC-13-904021-RR-VOL018 (pages 58 and 59)

<sup>7</sup> Travis-D-1-DC-13-904021-RR-VOL018 (pages 58 and 59)

<sup>8</sup> Jazmine Ulloa, Sep 27, 2018, <https://www.statesman.com/NEWS/20160828/Conviction-upheld-for-Charlie-Malouff-in-Jonestown-fraud-case>

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## The Case Against Charlie

The case against Charlie began with an incident that involved improper use of a flashbang device (a type of diversionary device) during a bachelor party which was attended by members (active and former) of the FBI (to include FBI Special Agent Mark Tilton, who according to Police Chief Glen Smith, now Sheriff of Waller County Texas, who will be discussed in more detail), ATF SWAT, other law enforcement agencies, and emergency medical support services. Former ATF agent Eugene Williams (later charged and sentenced with a 10-year prison sentence) had taken some flashbangs from a range exercise and then used one at a bachelor party for Steven Cosby as a gag. Williams tossed the flashbang into the area where Cosby was standing. Unfortunately, upon the flashbang going off, it severely injured Cosby's foot. Charlie was not at the party or even in the same city when the incident occurred. However, the flashbang that was used was one that Charlie had provided for a lawfully approved training exercise. "Eugene Williams illegally kept one, if not more, of those training grenades. "As a former employee of the Bureau of Alcohol, Tobacco, Firearms, and Explosives in his position as special operations coordinator, Williams was entrusted with Cypress Creek's supply of NFDD's, and was one of two Cypress Creek employees who purchased NFDD's."<sup>9</sup> Charlie was not even aware that he was under investigation until ATF agent David Bock told him. Charlie was attending a family reunion when he received a call from Brock who told him that this was not supposed to happen but that the US Attorney was "gunning" for him.

Jeffrey Doran, Eric Edwards, Bradley England, Jason Martinez, Leland Miller, Wendell Nealy, Nicholas Robbins and David Schmidt (all law enforcement officers who were at the party) also "...were indicted on charges of tampering with physical evidence, stemming from the Aug 27, 2004, explosion during a bachelor party in Williams' southwest Montgomery County home."<sup>10</sup> "Following the incident, investigators were told by those present that the injury to

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<sup>9</sup> <https://law.justia.com/cases/texas/ninth-court-of-appeals/2007/8803.html>

<sup>10</sup> <https://www.chron.com/neighborhood/article/Investigation-into-2004-bachelor-party-explosion-9640996.php>

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Crosby was a result of a “chainsaw accident.” The story then changed to a “fireworks accident.”<sup>11</sup> “...the Montgomery County District Attorney dismissed the cases on Dec. 4, according to court records.”<sup>12</sup> In short, Williams’ law enforcement friends at the party, covered up the crime by concealing and tampering with evidence. Charlie, however, was charged and found guilty in Federal Court for “Unlawful Transfer” of the flashbangs Williams used during the bachelor party that wounded Cosby.<sup>13</sup> Ultimately, Williams, who had a history of conducting pranks, was found guilty (guilty on one count each of possession of a firearm that was unlawfully transferred to him, possession of a firearm not identified by serial number and improper storage of explosives<sup>14</sup>), and sent to prison; those who conspired to cover up a crime, tampered with evidence, and lied to investigators were let go with no charges; and, Charlie, who was not at the party or even the city where the party was held, was found guilty of a federal crime (He pleaded guilty to one count of unlawful transfer of one or more firearms.<sup>15</sup>). It is easy to understand why Williams was found guilty but why was Charlie (an active law enforcement officer, accredited sales representative of an explosive manufacturer, and Coast Guard member at the time) who was not at the party charged with a crime and the other officers who were at the party and colluded to cover up the crime, not charged. Charlie accepted a plea and received a sentence of three years of probation (which was discharged after one year). According to Celine Valverde, U.S. Probation Officer Assistant, U.S. Probation, Western District of Texas-Austin Division,

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<sup>11</sup> [https://www.fletc.gov/sites/default/files/imported\\_files/publications/the-fletc-journal/2007-Spring-FLETC-Journal.pdf](https://www.fletc.gov/sites/default/files/imported_files/publications/the-fletc-journal/2007-Spring-FLETC-Journal.pdf)

<sup>12</sup> <https://www.chron.com/neighborhood/article/Former-ATF-agent-could-face-prison-9605685.php>

<sup>13</sup> [https://www.fletc.gov/sites/default/files/imported\\_files/publications/the-fletc-journal/2007-Spring-FLETC-Journal.pdf](https://www.fletc.gov/sites/default/files/imported_files/publications/the-fletc-journal/2007-Spring-FLETC-Journal.pdf)

<sup>14</sup> <https://www.chron.com/news/houston-texas/article/Ex-federal-agent-is-convicted-in-stun-grenade-case-1635220.php>

<sup>15</sup> <https://www.chron.com/news/houston-texas/article/Ex-federal-agent-is-convicted-in-stun-grenade-case-1635220.php>

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Charlie's probation was discharged on 8 January 2007.<sup>16</sup> Regardless, it was a federal conviction that resulted in Charlie losing many of his Constitutional rights. Of specific interest was a statement made by former Assistant District Attorney James T. Kitchen, Harris County District Attorney's Office, Houston, Texas (2000-2004), to Charlie. According to Charlie, Kitchen told him that his conviction was "a present from the FBI."<sup>17</sup> The problem, of course, is that other than Charlie's word, there is no proof Kitchen made that statement. So, what exactly is the FBI's role in Charlie's conviction—if any?

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<sup>16</sup> Email between Charlie Malouff and Probation Officer Assistant Celine Valverde, dated Thursday, January 16, 2020, 8:05 AM.

<sup>17</sup> Information provided by Charlie M to TMAS, on 5 Jan 20.

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## The Role of the FBI

While the following cannot be proved, it is important to discuss the possibility that members (one agent in particular) of the FBI played a nefarious role in Charlie's federal conviction. According to Charlie, even though he cooperated with the prosecution of Williams, the "...U. S. Attorney and the FBI still went after Charlie, claiming he should not have transferred the flash bangs. Despite his innocence, his attorney told him that under the statute (which, unknown to Ely), was very vague and ambiguous, there was nothing that could be done, so he pled guilty. Charlie was convicted of the Federal felony of "unlawful transfer of a firearm"; however, he received no jail time or fine. Immediately After his conviction, Charlie was told by the U. S. Attorney that his conviction was his "present from the FBI..."<sup>18</sup> Charlie believed this animosity from the FBI stemmed from a negative relationship he had with FBI agent Tilton during the conduct of Coast Guard investigation of a Russian counter-espionage incident<sup>vii</sup> in 2001, six years prior to his 2007 arrest.<sup>19</sup> In 2001, while Charlie worked as a Coast Guard Sea Marshall, he investigated a report of a Russian spy posing as a seaman on a boat docked at the Houston City Dock, Houston, TX. After conducting an investigation, the Coast Guard passed the information to the FBI Russia desk, directed by FBI Special Agent Tilton. FBI Russia desk should have investigated the Russia spy incident because there was a credible threat directed at a named US port city. After a period of time had passed, no actions were taken and due to the lack of action a Congressional investigation was mentioned (no further information). Charlie's Coast Guard commander directed Coast Guard LCMDR Anderson and Charlie to meet with FBI agent Mark Tilton and inform him that the Coast Guard was going to "throw him under the bus"<sup>20</sup> if there was a Congressional investigation. Charlie speculates that because Tilton was the director of the FBI Russia desk (and a

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<sup>18</sup> <https://freecharlie.com/charlies-story/>

<sup>19</sup> Information provided by Charlie Malouff on 5 Jan 2020.

<sup>20</sup> This was a quote based upon Charlie's memory of the incident.

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celebrity of sorts<sup>21</sup>), allegations that the FBI did not do its job, it would have made Tilton<sup>viii</sup> and the FBI look bad. Prior to that exchange, Charlie had no relationship with Tilton other than Charlie being aware of Tilton's position as FBI SWAT Director. Any negative reporting would have possibly damaged Tilton's reputation causing his career to stall and possibly damage his reputation over-all. As a former agent, I can attest that most of us are extremely Type A and would never sit idly while our reputations are being besmirched. So, again, while, none of this can be proven (based upon the evidence we have now), it is POSSIBLE that Tilton held a grudge against Charlie and went out of his way to harm Charlie's career and reputation.<sup>ix</sup>

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<sup>21</sup> <https://www.c-span.org/person/?markilton>

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### Why Did Charlie Plead Guilty?

Charlie ultimately pleaded guilty under duress due to inadequate and ineffective assistance of counsel. He received a sentence of three years of probation which was discharged after only a year.<sup>22</sup> As mentioned elsewhere in this report, the case against Charlie began with an incident that involved Williams improper misuse of a flashbang device during a bachelor party which caused damage to Agent Steve Cosby. Former ATF agent Williams was later charged and sentenced with a 10-year prison sentence because he had taken some flashbangs from a range exercise and then used one at Cosby's bachelor party as a gag. While the flashbang used by Williams had nothing to do with Charlie, Charlie was convicted and sentenced to a three-year probationary period for the Federal felony of "unlawful transfer of a firearm."

Because it has been speculated, it needs to be made clear that Charlie did not provide information against Williams to avoid prison. Charlie was fully cooperative and was completely truthful as it pertained to the devices held by and used by Williams.

When filling out a sworn statement at the Austin, Texas ATF office, Agent David Bock had Charlie rewrite his statement five times because he did not want Charlie to mention his credentials authorizing him to train and transfer flashbang devices. It could also be perceived that by Bock holding Charlie there for almost three hours while he rewrote his statement, that it could have been considered a custodial arrest. Bock also did not allow Charlie to mention that he was trained by, and/or had worked under the control of Mike Roe (now deceased), the owner of the company that provided the flashbang devices. Bock told Charlie that he could not include any information about Roe, because Roe was deceased (Roe died during this on-going event and thus could not be used as a witness for Charlie). Charlie did not have an attorney with him when

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<sup>22</sup> Information confirmed by an Email between Charlie Malouff and Probation Officer Assistant Celine Valverde, US Probation Officer Assistant, US Probation, Western District of Texas-Austin Division; dated Thursday, January 16, 2020, 8:05 AM.

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he was writing his statement. Charlie asked repeatedly if he needed his lawyer and Bock told him no because he was not being charged and that they were not planning to charge him. It is also important to note that Bock did NOT read Charlie his Miranda Rights<sup>x</sup> but had Charlie mention that he transferred weapons from his office to the training site—which was information later used against Charlie—this is a clear Miranda violation.

It is also important to keep in mind that Charlie felt “safe” with his fellow law enforcement officers. He felt that he could trust them and the judicial system to do the honorable thing. Instead, Charlie now feels, and evidence tends to support it, that he was made an example by someone within the FBI who had an axe to grind. Six years ago, most of us would have scoffed at the notion of the FBI deliberately using its vast resources and power to target a specific person for nefarious purposes. But, as we have all seen with the events leading up to the last presidential election, there are members of the FBI who have no issue using their positions to advance their own agenda. Still, there is no solid evidence that this was the case here—but, it is conceivable. Regardless, while these are all issues that led to Charlie’s plea, his lack of counsel was the ultimate nail in the coffin.

Charlie is a loyal person who would never think about turning on his friends.<sup>xi</sup> His passion for his friends is admirable but was likely the main reason his only option was to take the plea. “Ely” who was an attorney (and a friend of Charlie’s), was court appointed by the Federal Magistrate to represent Charlie as his primary attorney. Charlie’s other public defender “Newton” appeared to have no motivation to support Charlie (Newton was basically Charlie’s “back-up” lawyer). As a law enforcement officer, Charlie did not have unlimited funds to hire private counsel. His state retirement was less than poverty wage, and because he trusted Ely’s comments about this being “bigger than Houston” (implying that someone in a high position or other agency was pushing an agenda to have Charlie brought up on charges) and having to look for a pardon, Charlie felt as though his choice was made for him. Ultimately, Charlie needed a competent lawyer to represent him in federal court and he did not have it. The following are some (but not all) of the major factors that equaled ineffectual, if not worse, counsel:

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- a) Upon hearing the details of the case, Ely told Charlie that while they want Williams, “someone” wanted Charlie. He then told Charlie that Charlie could not win the case, that he would need a pardon later. Ely gave up the case without doing much (if any) research and admitted that he could not win the case for Charlie. Considering how nebulous the laws are pertaining to the differences between law enforcement and private citizens’ use, ownership, transportation, and storage of firearms (such as flashbangs), Ely should have had a strong defense, as evidenced by the USA vs Vest case. Charlie was an active law enforcement officer, Coast Guard member, certified training instructor (to include being the Cedar park, Texas SWAT instructor), and was assigned as the Firearms and Equipment Officer. Vest won his case because he was an active law enforcement officer, certified instructor, and Equipment Officer— Charlie met those same qualifications.<sup>23, 24, 25</sup>
- b) In the Vest case, his lawyers argued that the statutes/law pertaining to law enforcement officers use, storage, transportation, and possession of firearms were vague, and thus fail under the Vagueness Doctrine.<sup>26</sup> While Ely could not have used the findings of the Vest Case, Ely should have researched and made the Vagueness Doctrine Argument.<sup>xii</sup>
- c) Ely and Newton should never have let Charlie’s written statement into evidence. ATF Agent Bock told Charlie that he did not need a lawyer, had Charlie change his statement four or more times, (he did not allow him to leave until Charlie had satisfied Bock’s desired statement even though it was not Charlie’s original), did NOT read Charlie his rights, and told Charlie that he was not being charged nor were they planning to charge him.

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<sup>23</sup> <https://www.ficarettalegal.com/less-lethal-devices-regulation-under-federal-law/>

<sup>24</sup> [https://www.att-tactical.com/att\\_explo\\_mag\\_flash-bang\\_day\\_box.html](https://www.att-tactical.com/att_explo_mag_flash-bang_day_box.html)

<sup>25</sup> U.S. v VEST 448 F. SUPP 2d 1002

<sup>26</sup> Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983).

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- d) Ely told Charlie that “someone” was out to get him—but, never found out who that person was. Ely also did not provide a witness to support his statement that someone was out to get Charlie.
- e) Ely and Newton never told Charlie who actually reported his name to law enforcement as the person who may have provided the flashbangs to Williams. Thus, Charlie was never able to face his accuser.
- f) Charlie made it clear to Ely that he agreed to plead guilty because he was assured it would only be a misdemeanor not a felony.
- g) After Ely was involved in a motorcycle accident, Ely was prescribed pain medications. He was physically unable to act as Charlie’s attorney; however, someone at the Federal Public Defender’s Office told Charlie that if Ely was not dead then he could not be appointed another attorney. Charlie could ask Newton (from the Public Defender’s Office) questions if he needed or wanted to.
- h) Charlie was not happy with his plea deal, but Ely and Newton never told Charlie that he could pull his plea if done before the judge passed sentence. After Ely’s accident (which completely side-lined Ely from the case), Charlie told Newton that he wanted to withdraw his plea. Newton replied that he was not Charlie’s assigned lawyer and would not help.
- i) Judge Hittner was aware of Ely’s wreck and medical status. Hittner was surprised when Ely walked into court and asked him why he was there. Ely responded that he was there to keep them from doing any more harm to Charlie than what had already been done. Ely was in court with the assistance of a cane, wearing a neck brace, and under the influence of pain killers.
- j) On the day that Ely showed for court, surprising Hittner, he also surprised Charlie, who did not know that Ely was going to show for court that day. Thus, there was no defendant/counselor planning for the sentencing phase of the trial.
- k) Charlie never provided flashbangs to Williams. Charlie, as part of his official role, provided flashbangs to certified law enforcement training exercises. During the training exercise involving flashbang devices, Charlie was told to report to the Coast Guard. Charlie needed a place to store the training devices, but the Coast Guard did

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not have a suitable facility. Williams claimed that his office met the legal criteria for the storage of flashbangs and other weapons and volunteered to store the weapons. Considering that he was a former ATF agent, Williams was aware of the storage requirements.<sup>xiii</sup> Thus, Williams took the devices from the training facility personnel, not Charlie as an individual. Charlie's lawyers should have driven this point home.

- l) There was NO connection between Charlie and the flashbang used by Williams at the Bachelor Party. Williams illegally obtained the flashbang from those flashbangs meant for certified law enforcement training exercises. Charlie's lawyers should have driven this point home.
- m) Charlie trusted Ely and Ely simply was not skilled enough to defend him in this case.

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## Summary

Charles Anthony Malouff, Jr. is a US military and law enforcement veteran—and hero, with the medals and scars to prove it. He deserves his nation’s gratitude, not the treatment he got as the result of the treatment he received at the hands of the US federal judicial system. There is no doubt that the charges that led to his plea deal were due to not only ineffectual counsel but also a biased judge, possible nefarious actions by an FBI agent, a probable Miranda Violation (by the ATF agent who took Charlie’s statement), and due to the vagueness of statutes/laws pertaining to possession, transport, use, and possession of firearms by law enforcement officers while on official duty. At worst, if Charlie requests a Presidential Pardon, he should get it; at best, Charlie’s case should be reviewed, the guilty judgement be reversed, and, he should receive an apology from the court for having allowed this case to ever have been presented.

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<sup>i</sup> Judge Hittner, who for the most part has an honorable reputation, has been involved in other cases where he likely knew the defendant received or had inadequate counsel, or simply refused to hear potential evidence. Please see: <https://www.chicagotribune.com/news/ct-xpm-2002-10-29-0210290312-story.html> , <https://www.nytimes.com/2004/04/08/business/lea-fastow-withdraws-plea-in-tax-case.html> and <https://lawsintexas.com/impeach-judge-david-hittner-thats-the-request-before-the-fifth-circuits-chief-judge-priscilla-owen/>

<sup>ii</sup> Please see United States of America v. James V. Vest No. 06-cr-30011-DRH; 30 August 2006; Vest, police officer, was indicted for knowingly possessing a machine gun, knowingly transferring a machine gun, and knowingly possessing a machine gun not registered to Vest in the National Firearms Registration and Transfer Record. Vest maintained that he received proper authority to purchase the machine gun on behalf of the Illinois State Police, and by virtue of his former position as equipment officer and current position as a lead rifle instructor, he had inherent authority to legally possess the weapon. The Court found that all three Counts against Vest must be dismissed

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because the laws were unconstitutionally vague as applied to Vest in his capacity while serving as a police officer, equipment officer and lead instructor. The similarities between this case and Charlie's case cannot be clearer.

<sup>iii</sup> A building is considered secured if it is a law enforcement or other government facility not accessible by unauthorized personnel. Please see: [https://www.att-tactical.com/att\\_explo\\_mag\\_flash-bang\\_day\\_box.html](https://www.att-tactical.com/att_explo_mag_flash-bang_day_box.html)

<sup>iv</sup> "...explosive materials must be kept in locked magazines...unless they are in the process of manufacture, being physically handled in the operating process of a licensee or user, being used, or being transported to a place of storage or use by a licensee or permittee or by a person who has lawfully acquired explosive , materials..." Please see: [https://www.att-tactical.com/att\\_explo\\_mag\\_flash-bang\\_day\\_box.html](https://www.att-tactical.com/att_explo_mag_flash-bang_day_box.html)

<sup>v</sup> If a person is not read their Miranda Rights before they provide a statement to the police, information in that statement cannot be used against him/her. Rule of thumb, if a person asks if they need a lawyer, they need a lawyer.

<sup>vi</sup> Charlie received the Law Enforcement Purple Heart for injuries incurred while running repeatedly into a burning vehicle in an effort to save the lives of a mother and her children. Charlie was unable to save them and has lived with those images for nearly two decades.

<sup>vii</sup> I am hesitant to include information pertaining to the alleged "bad-blood" scenario because none of it can be proved—and it sounds like a conspiracy story. However, because Assistant District Attorney James T. Kitchen made the comment about his conviction being a "present" from the FBI and the fact that FBI agent Tilton allegedly attended the bachelor party in which an agent's foot was injured, it would be unfair to Charlie not to at least mention it. If it can be proven that Tilton attended the party and that Kitchen made that statement, those would be key issues that should be investigated.

<sup>viii</sup> FBI Agent Mark Tilton was an FBI celebrity of sorts. He was a Sharpshooter for the Federal Bureau of Investigation and was involved in the FBI shootings at Ruby Ridge. Tilton and other snipers involved with the Ruby Ridge incident were accused of obscuring the truth about those shootings. Thus, Charlie's accusation that Tilton may have been involved with obscuring the truth isn't the only such accusation against him. Please see: <https://apnews.com/a5a486dc5b6b86c54c01dd6a87985f41>

<sup>ix</sup> As far as I can tell, FBI agent Tilton was never interviewed during the Williams' case—this is something that should be done to set the record straight (or to at least complete the record). LCMR Anderson could also add likely insights to Tilton's reaction during and after the Russia spy case.

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<sup>x</sup> If a person is not read their Miranda Rights before they provide a statement to the police, information in that statement cannot be used against him/her. Rule of thumb, if a person asks if they need a lawyer, they need a lawyer.

<sup>xi</sup> I have had multiple question and answer sessions with Charlie and he never spoke badly about his primary lawyer and friend, Ely. But, it is clear that Ely was over his head before he nearly died in a motorcycle accident, and most certainly should never have been in court while taking pain medications. In essence, Charlie was left with a back-up lawyer who didn't know the case and who apparently was hesitant to take on a federal case such as this—a case where there really was no case law to support either the defense or prosecution.

<sup>xii</sup> According to the Vagueness Doctrine, “...one may challenge the constitutionality of a penal statute based upon the argument that the statute is vague...”

<sup>xiii</sup> A building is considered secured if it is a law enforcement or other government facility not accessible by unauthorized personnel. Please see: [https://www.att-tactical.com/att\\_explo\\_mag\\_flash-bang\\_day\\_box.html](https://www.att-tactical.com/att_explo_mag_flash-bang_day_box.html)

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The following is a list of relevant questions asked by Robert Calhoun, President/Owner, Threat Mitigation and Analysis Service, LLC, and answered by Mr. Charlie Anthony Malouff, Jr.:<sup>1</sup>

1a. Question: Charlie, did you transfer/transport the device Williams used when he injured Cosby?

1b. Answer: I never gave it, directly to Williams, until class was in session; even then, not individually. The flashbangs were all in boxes and the instructors took what they needed for their respective class of the day.

2a. Question: Did you keep flashbangs from previous offices where you worked?

2b. Answer: I never kept flashbangs for personal use or gain. I only kept in my possession the flashbangs that were designated as needed for training.

3a. Question: Were the flashbangs transported and provided by you for training purposes done so under the direction of your supervisors?

3b. Answer: Yes. I did so with the knowledge of my immediate supervisor, the weapons manufacturer, and the respective agency head of the students being trained.

4a. Question: For the period of January 2001 through 2004, anytime you transported flashbangs for both training and operational purposes, you were working as a certified law enforcement officer?

4b. Answer: Yes. I did so as a civilian law enforcement officer, military member, or both.

5a. Question: Did you sign a sworn statement? If so, was your lawyer present? Were your rights read to you?

5b. Answer: Yes. I made a statement at the Austin ATF field office. David Bock had me change my story 5 TIMES because he said, "You can't put that in there" referring to my authority to train and transfer as a LEO, and "Mike Roe is dead so you cannot put in anything he told you." (Note: Roe was the flashbang manufacturer.) When Bock started changing things, I asked repeatedly if I needed an attorney and he said, "No. You are not being charged and we are not going to charge you." I was never read my rights when I wrote the statement. Honestly, I don't think they ever read them, but if they did, it would have been at the AUSA's office in Houston regarding the "unlawful transfer of a firearm."

6a. Question: Did your lawyer tell you that until sentencing is imposed, you can withdraw a plea?

6b. Answer: No.

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7a. Question: During the investigation, was your home, office, and vehicles searched? If so, were flashbangs found in which you did not have permission to have?

7b. Answer: No and no.

8a. Question: Did you agree to a plea deal in which you provided information against Williams in order to keep out of prison?

8b. Answer: No. I had nothing to hide and that was even brought up in Williams' trial. I was always cooperative on my own and always told the truth!

9a. Question: What exactly were the terms of that [plea] agreement? Were you coerced to admit guilt? If so, what made you feel as though you were coerced?

9b. Answer: Guilty in exchange for three years of probation, no jail time. Yes (was coerced). My primary attorney out with critical injuries and no idea that he would recover and the failure to act of the referral attorney, Newton, who refused to investigate my claim of retaliation and desire to withdraw my plea.

10a. Question: When you tried to withdraw your plea, had you already agreed to the three years of probation and had the judge already made a final ruling? You also mentioned that you tried to withdraw your plea prior to sentencing but were unable to. Why?

10b. Answer: No. I had only agreed to Ely (attorney) under the premise that I would not do jail time. There was no term discussed at that time. And, he told me it was a misdemeanor not a felony! Ely was out due to his injuries and Newton refused to assist. When I asked Newton, he said, "No, I'm not your assigned lawyer."

11a. Question: How did your name ever come up in the Williams' investigation?

11b. Answer: Who knows?

12a. Question: If you were innocent and you knew you were innocent, why did you take the Plea deal?

12b. Answer: I was a cop. I was not an attorney. Attorneys practice law. You have an attorney because they are the ones who are supposed to give you the best all-inclusive advice on your case. Ely told me early on that this was beyond what he felt he could do and that my best bet was to minimize any damage and seek a pardon. He then, shortly thereafter, crashed out and was, in essence, no longer my attorney. I learned about the retaliation after he crashed out, but Newton REFUSED to get involved. I was left with no other known option. Hindsight is irrelevant, but if I knew then what I know now, things would have been different. I had to go with what I knew at that time. Minimize the damage. Not only to me, but to my aging parents as well.

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13a. Question: If the best advice the lawyer could give you was that you should ask for a pardon, this means that he KNEW you would likely be found guilty? Did you feel hopeless, that no one could help you, and that in spite of being innocent, your only choice was to take a plea?

13b. Answer: Yes, pretty much! Once I kept getting deaf ears when Ely was out, it became more an act of despair and survival.

14a. Question: Do you know IF the law you were accused of breaking has since become unconstitutional? (Note: Defendants can occasionally get a plea over-turned if the law has since been deemed unconstitutional.<sup>1</sup>)

14b. Answer: The courts have very unique ways of determining individual or blanket decisions. There is only one known case of where the statutes that I was convicted of, were also used to try to convict another, an Illinois State Police Sgt, James V. Vest, around the same time frame, and in his case, the Federal Court narrowed their decision to “as applied” only in his case. And, to further keep their decision from being a national precedent setting case, they made it “unpublished”. While it can be addressed in another case, it is not a law setting case, requiring the instant case judge to decide if they want to accept the findings of that particular case or not. You have to independently argue the same challenges and justifications, and here, it is the “intent of congress as applied to law enforcement”. Which, I tried to do in my appeals, only to be denied, NOT ON MERIT, but ONLY on technicalities.

15a. Question: Do you KNOW and can you PROVE, if the judge and/or prosecution in your case knew that you didn’t fully understand the charges or the effects against you? (Note: Judges are required to set aside guilty pleas, even without the request from the defendant, when they receive an indication that a defendant isn’t guilty or didn’t fully understand the charges or the effects of admitting guilt.<sup>2</sup>) Other than your lawyer, are there witnesses who can prove this? If so, who are they and how can they prove your point?

15b. Answer: No. As for others that could prove that I did not understand the ramifications of the plea, Mike Roe, but he is dead. James Vest and his attorneys, but we did not know about them at the time.

16a. Question: Was the judge (or prosecutor’s office) aware of your lawyer’s accident? Were you allowed the opportunity to have another lawyer?

16b. Answer: Yes, they were aware. I was told by the Federal Public Defender, that Ely was not dead and until he died, I would not be appointed another attorney, but if I had questions, contact Newton, which I did, and he refused to help.

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<sup>1</sup> <https://www.nolo.com/legal-encyclopedia/withdrawing-guilty-plea-criminal-case.html>

<sup>2</sup> <https://www.nolo.com/legal-encyclopedia/withdrawing-guilty-plea-criminal-case.html>

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17a. Question: Did you have a lawyer with you at the sentencing?

17b. Answer: Yes. Ely showed up drugged out and with a cane and I can't remember if he had a neck brace as well. There was total surprise on Judge Hittner's face when Ely walked in. I was surprised as well when I saw him! Hittner asked him, "What are you doing here?" Ely, to his credit, said, "to keep them (referring to the AUSA) from doing any more harm to him than what they have already done."

18a. Question: You mentioned your lawyer was "drugged up", how do you know he was drugged up?

18b. Answer: He was critically injured in a motorcycle accident. He could not even be moved back to Texas until he stable enough for the trip...that was like two months. He was very broken and there was no way he was not on drugs. I didn't even know he came back. He told the judge was he came back just for my sentencing to make sure they didn't do any more to me than they did. I suspect that should have triggered the judge that something was awry, but Hittner is a very catankerous judge and it had to do with police misconduct resulting in Cosby losing part of his foot. So I don't think he was as "objective" as he could have been. I feel comfortable with that statement because of his immediate denial, without review, when I sent in my Coram Nobis--denied in like three days if that.

19a. Question: Was your other lawyer with you and Ely at the sentencing—the one assigned to you while Ely was out?

19b. Answer: No. He was not assigned to the case, just my "go to if there's a problem" according to the Federal Public Defenders office person who called me to tell me Ely was in an accident. There was no "team."

20a. Question: Did your lawyer tell you that you needed to appeal right away? If so, what actions did you take?

20b. Answer: No. No explanation of the necessity to get it on the record of the right to enter an appeal.

21a. Question: Did the judge or prosecutor's office tell you that you couldn't appeal?

21b. Answer: Yes, but they were wrong too. You always retain the right to appeal for in and prosecutorial misconduct...but I learned that later because of the state case. I was told once you enter a plea, you can't appeal.

22a. Question: Did you transport flashbangs that you should not have had (for examples, flashbangs that you kept from former police departments where you had worked) to any site where Williams could have obtained them?

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22b. Answer: No. All flashbangs in my possession were for law enforcement training.

23a. Question: So, you didn't only transport flashbangs to the training sites, but you also acted as a trainer during the CCATT/CCEMS?

23b. Answer: Absolutely! I was a trainer for all seven classes conducted during that time period.

24a. Question: Were you a certified trainer, and were you authorized (and by whom), to both transport and conduct the training at CCATT/CCEMS?

24b. Answer: Yes. I was a licensed master peace officer for Texas and certified training instructor licensed by the Texas Commission on Law Enforcement Standards and Education, certified instructor by the manufacturer-spent a week in Phoenix, AZ getting certified by Mike Roe personally, and approved to train by CCEMS, a Texas political subdivision-and recognized in Texas as a government agency.

25a. Question: Did anyone keep account of how many devices were used during training and then compare that to the number of devices returned to storage?

25b. No. It was never an issue and not even the ATF or FBI guys who were there questioned the training/issuance practices at that time.

26a. Question: Who was responsible for keep account of those devices?

26b. Answer: That would be a vague and unanswered question. Based on the times, as in one respect, it would be me and on another it would be the hosting agency. There was no policy or directive from the state, the agency, or the manufacturer. I think everyone just relied on "law enforcement exemption."

27a. Question: Did you have William's sign for the devices and were the devices counted before he signed for them?

27b. Answer: No. Williams did not take any flashbangs from me.

28a. Question: You mentioned being in touch with Roe, why did you involve him?

28b. Answer: He was the manufacturer and ultimate responsible party.

29a. Question: The devices didn't belong to him, (Roe) did they?

29b. Answer: In short, they did. They were for training, but it also served (vague policies and laws allowed for this...same as machine guns) as advertising for him and support for law enforcement training. Every manufacturer of any law enforcement product provided their products for law enforcement training aids, provided the training was sanctioned and authorized.

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30a. Question: He may have manufactured them but weren't they owned and controlled by your law enforcement supervisor?

30b. Physically yes; but, still registered to the MFG and once it's destroyed its destroyed, so that becomes one of those legal quagmire questions I can't answer.

31a. Question: Did the Coast Guard (CG) force you out due to the incident involving flashbangs? If not, when and why did you leave the Coast Guard?

31b. Answer: No. I left because on June 25<sup>th</sup>, 2005 I was the sole survivor of a two-car accident. Three people died in that accident, and I was seriously injured with extensive internal injuries. My reenlistment was November 5, 2005 and because of 9-11, I was required to pass a physical agility test. Because of my injuries I was not capable or able to pass that test. They offered a waiver but only for 30 days, but I was not medically released until February 2006, well beyond. The CG did give me a letter saying I was unable to reenlist as a result of my injuries. No other issues. I was a decorated NCO who passed the Chief exam, a Maritime Investigator, Physical Security Team Leader, Intelligence officer, Boarding Officer, Trainer, a Chief of Police, SWAT and Firearms Instructor, and had ton of experience in counterterrorism. They were expecting me to reenlist. I only needed one more enlistment and I could have had an Active Duty 20-year retirement.

32a. Question: What research did either of your lawyers do and what did they find pertaining to other law enforcement officers in similar situations?

32b. Answer: I have no idea what they did and at that time I had no idea or access to a law library or even what to look for.

33a. Question: At your sentencing, did anyone explain to you the ramifications of being found guilty of a federal offense? If so, who, and what did they say?

33b. Answer: Yes, but it was more like, while this would do this or that, you have already retired. You won't do time, you won't lose your retirement, you won't lose your gun collection. The only thing I lost was the right to vote, which was trivial for me.

34a. Question: Was there any mention of those other people involved with the attempts to cover up William's incidents and their tampering with evidence?

34b. Answer: Not in my plea, but they were all over the place at Williams' trial.

35a. Question: I assume you had a security clearance prior to the incident with Williams. What happened to your security clearance?

35b. Answer: Secret and working on a Top Secret. Gone.

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36a. Question: As it pertains to the incident involving flashbangs Williams got from the training site, where did you obtain the flashbangs that he used in the prank (or any of the other pranks he was involved with)?

36b. Anything marked Precision Ordnance came from Mike Roe, delivered from Arizona, by his direct employee, in a company car, to my affiliated police or sheriff's department. Anything other than Precision devices, I had nothing to do with or even knew anything about them until ATF Agent Bock showed me a picture of what they seized from Williams' home.

37a. Question: If you had nothing to do with ANY of the devices used by Williams, or that were seized by law enforcement, how did they connect you with the incident?

37b. Answer: I delivered flashbangs to the CCEMS class sites. Williams took them from the training site.

38a. Question: As it pertains to the incident involving flashbangs Williams got from you, were you acting as a Texas law enforcement officer, or as a private contractor who sold flashbangs and other law enforcement/military type materials?

38b. Answer: I was a licensed Texas Peace Officer and certified instructor.

39a. Question: you were a certified instructor, but certified by whom and certified to do what, exactly?

39b. Answer: State of Texas, FBI, and Precision. Anything I did was in compliance with the law and agency and approved by my law enforcement superiors, specifically the agency head!

40a. Question: As it pertains to the incident involving flashbangs you transported to the training site, if you were you acting as a Texas law enforcement officer, were you an active member of a federal, state, or local bomb/explosive response team, or an equipment officer?

40b. Answer: Yes to both. I was the SWAT Instructor for Cedar Park Texas, and because of my knowledge of explosives both from the Military and Precision Ordnance and other certified law enforcement training including some ATF training at FLETC in Glynco Ga, I responded as the primary explosives expert on multiple occasions in Cedar Park regarding pipe bombs and blasting caps to assess the situation and determine the requirement for a Fort Hood Military EOD or Austin PD Bomb Squad call out. Same when I was an officer at Sunset Valley PD in 1999-2000 and Bertram PD if there were cases that involved booby traps on drug cases. Additionally, since 1990 when I worked as a Special Agent/Criminal Investigator for the Texas Treasury Department, I was the Firearms/Equipment Officer and 1033/1122 Department of Defense Equipment and Program Manager for EVERY department I belonged to, INCLUDING THE US COAST GUARD at both the MSO Houston Galveston and MSST 91104 until I retired. I was registered with the DoD as such and visited DRMO's in Baltimore, W DC, San Antonio, Ft. Polk, Ft. Hood, and El Paso up to

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my accident. To register you are identified and authorized by your respective agency in writing to the DoD. This included procurement of weapons, ammo and could have involved flashbangs or explosives if they were readily available at the time of the visit.

41a. Question: After training was completed, what was the typical way in which the remaining flashbangs were stored and transported back to the storage facility?

41b. Answer: They were put back in a box and someone (one of the instructors-usually one of the CCATT guys) transported them back to Williams' office.

42a. Question: As it pertains to the accusations levied against you in the first federal case, were you cited or accused of transporting flashbangs and other weapons that was the equivalent of more than 20 detonators or 2.5 pounds of explosive materials?

42b. Answer: Not that I know of.

43a. Question: One of the news articles mentioned that you had flashbangs from several of your former places of employment? Is this true? If true, under what authority did you keep/maintain those devices? 43b. Answer: That was because when they seized all of the flashbangs from the training what was not previously used was incorporated into the next round of training supply and designated for the same CCATT training. This was approved by the manufacturer Mike Roe. The CCEMS didn't care and neither did my agencies as they were for the training and I was not one to go horseplay around with them. It didn't even matter to the government except for the news story to embellish it. Simply put, other than the news people, no one cared. All of the instructors including FBI and ATF all knew we kept training aids from one class to the next. We were doing one about every six months at the same place all the time.

44a. Question: Does every flashbang have a serial number? If so, why did some of the flashbangs Williams had in his possession, not have serial numbers?

44b. Answer: They are supposed to, unless they are designated as a Practice Device, in which case they are just the fuse and pin head of a standard M26 or 67 military grenade...they both use the same pin/fuse ignition system and are allowed to be shipped, unregistered, with UPS or other ground transportation and is not considered anything more than the same as a firecracker or bullet. Functional devices to the field are different and require tracking. So, the ones he had were either blue colored practice flashbangs, which there may have been as many as a dozen, or they came from some other company that I had nothing to do with! In this case, Williams had flashbangs not only from what I delivered for the classes, but flashbangs he collected from when he was an ATF Agent and from other departments as well! Some came from Connecticut. All these were found in HIS possession, so the natural order of investigation would be to investigate the origins of all. If I remember correctly, the actual flashbang used to blow Cosby's foot off was

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not a Precision Ordnance device. It was "Orange" and belonged to another manufacture. I NEVER handled an Orange device and had no idea who that manufacturer was. However, because they found the devices from training, I got thrown into the mix. What Williams did, taking them from the training and putting them in his trunk and at home and taking them to horseplay around Houston, was on him, not on me. I never delivered a flashbang directly to Williams!

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<sup>1</sup> Robert Calhoun Comment: Mr. Malouff is willing to take a polygraph pertaining to any of the information he provided during the question/answer session. He is also willing to answer these questions under oath, if requested. These questions were asked several times, in different ways, to Charlie from November 2019 to April 2020. It is my opinion that had these questions been asked and answered during the trial, Judge Hittner would have likely ruled differently. I would also conclude that Hittner should have known that this case was not conclusive and the allegations and associated laws/statutes were extremely vague.