UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:)
)
Leroy J. Pletten) JUN 7 1985
)
v.)
)
Office of Personnel Management)

ANSWER AND/OR OBJECTION TO AGENCY'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

NOW COMES the Appellant, Leroy J. Pletten, and enters answer and objection to the 24 May 1985 OPM interrogatories and request for production of documents, for reasons including but not limited to the following:

1. MSPB lacks jurisdiction of the case, except to reverse ab initio, due to the lack of specificity and the ex parte communications as noted. Cf. Sullivan v. Navy, 720 F.2d 1266 (1984).

2. Based on the installation refusal of processing of the 23 February 1982 EEOC decision, all matters concerning which the OPM request is made, are untimely as requested after the 30 day limit set by EEOC, and all matters are considered as already resolved in Appellant's favor. There have been no affidavits, depositions, and transcripts which dispute (or may appear to dispute) the corruption, extortion, falsification, disease data, psychiatric data, bribery, racketeering, and group association noted in the record, by installation and MSPB officials named in the 10 May 1985 appeal.

3. MSPB has a demonstrated record of errors and of disregarding evidence, hence, providing evidence for MSPB review is a useless act. "Equity does not require a useless act," Montgomery v. Cook, 76 N.M. 199, 413 P.2d 477 at 482 (1966).

4. The "action was never commenced," Siemering v. Siemering, 95 Wis.2d 111 at 115, 288 N.W.2d 881 at 883 (1980), based on the failure to have provided specificity (duties that supposedly cannot be performed, requirements supposedly restricted, etc.), and based on the fact that I had already been constructively discharged a year before the application was made in 1981, and unemployment compensation covered the

entire OPM review period April - Oct. 1981, i.e., Jan. - Nov. 1981. Hence, MSPB lacks jurisdiction.

5. Appellant is entitled to judgment as a matter of law based on the installation failure to have provided specificity showing a service deficiency, i.e., facts showing that I am not ready, willing, and able to perform my assigned duties. Hence, providing data is a useless act, and as a matter of law, not required.

a. The Handbook X-118 job qualifications requirements for Position Classification Specialist, GS-230-12, do not have a requirement relative to tobacco smoke, i.e., no requirement/restriction applies.

b. The medical employment examination test forms applicable for federal jobs, particularly for Position Classification Specialist, GS-230-12, do not list a requirement/restriction relative to tobacco smoke.

c. Note Standard Form 50, dated 18 September 1977, waiving qualifications requirements for appellant. Thus, even if there were a qualification/restriction factor relative to tobacco smoke (which there is not), there can be no DISqualification as a matter of law.

d. There is no law or regulation saying that guidance for a safe work site and for safe behavior by coworkers is to be treated as somehow an "environmental" restriction on an employee's ability to work.

e. There is no law or regulation saying that the court was wrong in stating, "Workmen are not employed to smoke," MTM Co. v. MCP Corp., 49 F.2d 146 (1931).

f. There is no law or regulation saying that tobacco smoke (the product of smoker mental disease) is, as a matter of law, "environmental" in nature; i.e., that tobacco smoke is defined as part of "employment" as a matter of law.

6. The providing of a reasoned explanation for the "unqualified and absolute" safety duty is Congress's responsibility; the responsibility for providing a "reasoned explanation" for the specific limits in 29 C.F.R. 1910.1000.Z listing certain tobacco smoke ingredients is the Dep't. of Labor's responsibility (See Ind. U. Dep't. v. Am. Petrol. Inst., 448 U.S. 607, 100 S.Ct. 2844, 65 L.Ed.2d 1010 (1980)); and the responsibility for explaining the duty to "remove smoke" and achieve the threshold conditions precedent before smoking can be permitted is the Army's responsibility, considering its issuance of AR 1-8, and is the Defense Dep't.'s

responsibility considering its issuance of 32 C.F.R. 203. None of these duties of providing a "reasoned explanation" can be transferred onto a private doctor.

7. There is no law or regulation that transferred from issuing agencies (e.g., Dep't. of Labor on 29 C.F.R. 1910.1000.Z, and Dep't. of Defense on 32 C.F.R. 203) the responsibility for providing a "reasoned explanation" for supporting control of a hazard onto a private physician.

8. There is no law or regulation transferring responsibility onto a private physician, of the duty to provide a "reasoned explanation" for recommending beginning action to implement the 25 Jan. 1980 USACARA report noting the hazard, a mandatory implementation duty. Cf. Spann v. McKenna, 615 F.2d 137 (1980).

9. The OPM decision pattern which culminated in the 24 May 1985 request has not been in good faith. For example, note OPM failure to honor res judicata (i.e., to make reference) concerning the on-site danger admitted by employer physician Dr. F. J. Holt (Dep., pp. 25 and 42) and serving as a premise for the MSPB issuances of 20 June 1983 and 24 Oct. 1984.

10. The OPM decision pattern which culminated in the 24 May 1985 request has not been in good faith. OPM failed to honor res judicata concerning the multiple decisions and medical letters affirming that I am ready, willing, and able to perform all duties of record without restriction as a matter of law. Note OPM's failure to tell the agency to return me to duty. Note OPM's misrepresentation of the medical letters (noted by Col. Benacquista as referencing the on-site hazard, Dep. p. 24) as establishing "restrictions," a misrepresentation violating M.C.L. 767.39; M.S.A. 28.979, cf. People v. Turner, 125 Mich. 8, 336 N.W.2d 317 (1983), to aid and abet the local extortion.

11. The OPM decision pattern culminating in the 24 May 1985 request has not been in good faith. Note OPM fraudulent references to speculative matters off-post, when the issue is the hazard on-site, as noted by Col. Benacquista's deposition, p. 24, and Dr. Holt's deposition, pp. 25, 41 and 42.

12. No specificity has been provided concerning any union contract as alleged by MSPB as a basis for not being able to control the on-site hazard. No specificity has been provided concerning specific clauses(s) (since there are none), and the union's duty to negotiate in good faith, cf. NAACP v. DPOA, 591 F.Supp. 1194 (1984), and concerning its inability to do so considering the fraud by the installation-MSPB group association (claims of an "improved" site) concealing the

hazard admitted by Messrs. Braun and Holt.

13. There has been no identification of any law or regulation saying that MSPB has jurisdiction of excused absence situations, and of criminal violations including but not limited to extortion and embezzlement.

14. There has been no identification of the "enforcement difficulties" alleged by MSPB as a basis for not being able to control the on-site hazard, for the reason that there are no "enforcement difficulties."

15. There has been no explanation for the OPM failure to mention or honor res judicata concerning the multiple decisions and letters affirming that I am ready, willing, and able to perform all my duties of record without restriction as a matter of law.

16. There has been no explanation for OPM failure to provide to MSPB an amicus curiae brief as solicited by MSPB, regardless of how fraudulently, in August 1983.

17. Under the circumstances of the continuing corruption displayed by MSPB and installation officials, I am unable to respond, and as noted in a motion for appointment of a respresentative of the U.S. Attorney's office to deal with the corruption, unable to deal with the MSPB/installation misconduct in this civil proceeding.

18. Col. Benacquista confessed to what happened; i.e., that he made the decision to overrule the examining doctors, i.e., the basic decision that would be of interest to OPM (Dep. pp. 13, 62-63), if it had jurisdiction. Col. Benacquista is acting as a superdoctor. In reply to OPM question 1, the last known telephone number for him is: (313) 574-6297.

19. The expert witnesses will include Joseph Howe of OPM, who will testify that there is no requirement for tobacco smoke, as per his 30 Jan. 1984 letter. His analysis will foreseeably be based on the numerous court precedents.

20. Leroy Pletten will be an expert witness testifying to all the matters in the record and appeal, as per his qualifications and experiences in Employee Relations and Position Classification. His testimony will be based on the record and will cover the criminal acts giving rise to the fraudulent application, and the delusions and hallucinations of officials such that they "perceive" (due to their mental illness) total disability contrary to reality.

21. The examining doctors will foreseeably testify as to

a proper reaction to the guidance to control the on-site hazard; their assessment of the installation and MSPB overruling of my unrestricted ability to work; and the symptoms displayed by the MSPB and installation offenders.

22. References to the medical literature and texts have already been provided, relative to the fact that smoking is a disease, causes brain damage in smokers, etc., as noted in the record. Due to the corruption that is pervasive as the record makes clear, OPM has ignored such data showing that it is up to smokers to seek accommodation since smoking (not nonsmoking) is a disease, "Equity does not require a useless act," Montgomery v. Cook, 76 N.M. 199, 413 P.2d 477 at 482 (1966), i.e., repeat citations. However, some are enclosed as a reminder of the disregard of the data already provided.

23. Relative to question 3, the MSPB, TACOM, and OPM offenders as noted will testify that they have not provided affidavits, and have not deposed or testified in reaction to the 23 February 1982 EEOC decision; hence, all matters of corruption, lack of specificity, no advance notice, that smoking is not listed in the job description, no job restrictions as a matter of law, etc., are undisputed. The following persons are to be made available for cross-examination concerning their behavior: MARTIN BAUMGAERTNER, RONALD WERTHEIM, ERSA POSTON, STEPHEN MANROSE, VICTOR RUSSELL, ROBERT TAYLOR, HERBERT ELLINGWOOD, DENNIS DEVANEY, MARIA L. JOHNSON, JOHN J. BENACQUISTA, EDWARD E. HOOVER, CARMA J. AVERHART, FRANCIS J. HOLT, and WILLIAM C. JACKSON. I also want my coworkers available, to identify the work areas they service; and persons familiar with job qualifications; and the OPM personnel responsible for not sending MSPB an amicus curiae brief. I also want all depositions from the prior case included in the record. Please arrange this.

24. Until a response is received to my 29 May 985 interrogatories, and on this motion, providing further data is a "useless act." Rebuttal witnesses will be decided once advance notice is provided, if any.

25. Under the circumstances where no specificity has been provided, and where the examining doctors have been overruled by Col. Benacquista initially, and then by corrupt MSPB issuances, I am unable to respond to the OPM request of 24 May 1985, except as indicated.

26. Note the documents which MSPB has ignored, in terms of its having ignored Piper v. Dep't. of Justice, 4 MSPB 89 at 90 (1980), "the agency should have known it would not prevail on the merits when its only evidence was the inconsistent

statements of the employee's co-worker," cited in Yorkshire v. MSPB, 746 F.2d 1454 at 1457, n. 4 (1984). (Note that Mr. Hoover's claim of me servicing the whole site is contradicted by C. Averhart; note that USACARA and EEOC note when smoking is not permitted--when it causes danger, discomfort, etc., matters MSPB ignores; note that OPM 30 Jan. 1984 contradicts the claim that there is a qualification requirement for tobacco smoke, hence no disqualification can occur; note that the examining doctors, OPM, MESC, and OWCP all contradict MSPB on my ability to work; note that Dr. Holt (Dep., p. 41) contradicts the agency on whether excused absence or sick leave applies when there is a hazard. (Of course, officials who are not corrupt or bribed are aware that excused absence applies, under FPM 630.11.) (Note that even the 24 Oct. 1984 MSPB decision cites smoking as "personal desires," not as a requirement; to disqualify somebody, a job requirement must be shown for the matter at issue, and from the job description, as MSPB ruled itself, in Stalkfleet v. U.S. Postal Svc., 6 MSPB 536 at 541 (1981).

27. MSPB has ignored Cicero v. U.S. Postal Svc., 4 MSPB 145 at 146 (1980), "in light of the evidence accumulated by the agency, it "should have known that the demotion of appellant could not be sustained,'" cited in Yorkshire v. MSPB, 746 F.2d 1454 at 1457, n. 4. (All the evidence from USACARA, OPM, OWCP, MESC, the examining doctors, shows my ability to work, refuting MSPB claims to the contrary.) It is up to the agency and MSPB to provide evidence and documents under these circumstances where the evidence and documents provided have been ignored. Equity does not require a useless act by me.

28. MSPB has ignored Parodi v. MSPB, 12 MSPB 274 (1982), which notes the right to a smoke-free environment, based on 690 F.2d 731 (1982), a reference to the "unqualified and absolute" safety duty (not just "reasonable") commanded by Congress, referenced in Nat'l. R. & C. Co. v. OSHRC, 489 F.2d 1257 (1973). Note that safety is "above all other considerations" (including any smoking desires), as evident in the Supreme Court decision, Amer. Textile Mfrs. Ass'n. v. Donovan, 452 U.S. 490, 101 S.Ct. 2478, 69 L.Ed.2d 185 (1981).

29. MSPB has ignored Steger v. Defense Invest. Svc., 717 F.2d 1402, 1406-07 (1983), the "agency failed to investigate exonerating evidence," cited in Yorkshire v. MSPB, 746 F.2d 1454 at 1457, n. 4. (The installation has refused to process any of my EEO complaints, refuses to address the matter of OWCP, OPM and MESC all ruling in favor of me, and refuses to answer my multiple requests to return to duty based upon the repeated confirmations of my ability to work. Gen. Stallings confessed he had not read AR 1-8 (Dep. p. 9), and that he had not investigated the matter before he fired me. He was under

the influence of Mr. Hoover, as he admitted, a violation of Sullivan v. Navy, supra.

30. MSPB has ignored Sullivan v. Navy, 720 F.2d 1266, guidance against early stage ex parte communications impairing a right decision at the earliest stage (here, by Dr. Holt upholding excused absence, note Dep. p. 41 ("administrative leave").

31. MSPB has ignored Yorkshire v. MSPB, 746 F.2d 1454 at 1456, whose reversal criteria include:

a. employee substantial innocence (here, no threshold condition precedent qualification requirement in Handbook X-118 and job description, no employment medical examination forms for tobacco smoke upon which to disqualify me, and "Workmen are not employed to smoke," MTM Co. v. MCP Corp., 49 F.2d 146 at 150.

b. agency bad faith (deliberate use of false data, ex parte communications with MSPB officials, refusal to process EEOC decisions (such as of 23 February 1982) in my favor, refusal to investigate matters, disregard of the 25 Jan. 1980 USCARA Report, refusal to answer my acceptances of decisions supporting my ability to return to work, etc.

c. gross procedural error, here no advance notice, no specificity, and the use of false data to justify refusing me a hearing (false data noted by EEOC), and the denial of a hearing. That is a constitutional violation (worse than merely procedural), cf. Barnhart v. Treas. Dep't., 588 F.Supp. 1432, and U.S. v. Barr, 295 F.Supp. 889. Note that the ouster is being justified by reference to some unknown union contract, unknown enforcement difficulties, and unknown job assignment all over the installation (contrary to C. Averhart's testimony that I service only 1/5 or so), no aspect of which is cited in an advance notice, since there was no advance notice.

d. the agency knew or should have known it could not prevail on the merits, since the medical letters all emphasized my ability to work, as honest reviewers understand, and since there is no qualification requirement for tobacco smoke, hence, there cannot be a disqualification on that basis even if doctors said I could not smoke (which they did not say). "Workmen are not employed to smoke." The agency and MSPB corruptly changed a safety issue into an ability to work issue, in reprisal against my having just won USACARA confirmation of the hazard 25 Jan. 1980.

e. prohibited personnel practices. Disqualifying a person without setting forth the qualification requirement at

issue is the epitome of a prohibited personnel practice. See my deposition, p. 4, and the lawyer's brief, pp. 3-4, June 1982, requesting specificity identifying the alleged requirement for tobacco smoke. "Workmen are not employed to smoke."

32. MSPB ignores Yorkshire v. MSPB, 746 F.2d 1454 at 1457, n. 5, "As a practical matter, if the agency possesses no credible evidence prior to the hearing before the Board . . . the result of the case will usually be in favor of the employee" (major reasons now given on some unknown union contract, unknown enforcement difficulties, and unknown location of serviced organizations, were not stated in any advance notice, and were not even alleged until Mr. Hoover (post-termination) made the false and non-specific claims. EEOC successfully refuted all their claims, by its 8 April 1983 decision; and the removal should have been cancelled then, and reprocessed if the agency still thought it had a case.)

33. MSPB ignores Yorkshire v. MSPB, 746 F.2d 154 at 1455, n. 2 (1984) (reference to "double hearsay") (Mr. Hoover is the dishonest source of claims I serviced the whole site, not C. Averhart, who referenced 1/5, not 100% servicing, Dep. p. 30. Mr. Hoover's view is worse than hearsay, as he contradicts the immediate supervisor).

34. Wherefore, this answer and objection is submitted.

Date: 7 June 1985 Leroy J. Pletten

Leroy J. Pletten
Appellant

TOBACCO "UNIVERSAL MALICE"

JUN 7 1985

BLADDER CANCER

Ben G. Cobb, M.D. and Julian S. Ansell, M.D., J. Amer. Med. Ass'n. 193(5): 329-332, 2 August 1965

E. L. Wynder and R. Goldsmith, Cancer 40: 1246-1268, 1977

BLOOD FLOW IMPAIRED

J. T. Shepherd, M.D., Brit. Med. J. 2(4738): 1007-1010, 27 October 1951

Morris T. Friedell, M.D., J. Amer. Med. Ass'n. 152(10): 897-900, 4 July 1953

M. Kedra, M.D., and A. Korolko, M.D., Polish Med. Sci. and Hist. 8(4): 145-148, October 1965

Robert A. Kuhn, Ann. N. Y. Acad. Sci. 142(1): 67-71, 15 March 1967

G. U. Cellina, M.D., W. A. Littler, M.D., M.R.C.P., et al., Amer. Heart J. 89(1): 18-25, January 1975

J. S. Meyer, M.D., et al., J. Amer. Med. Ass'n. 250(20): 2796-2800, 25 November 1983

BRONCHITIS

Geoffrey Dean, Brit. Med. J. 1(5502): 1506-1514, 18 June 1966

J. Rimington, Brit. Med. J. 2(5758): 373-375, 5 May 1971

SYMPTOMS OF BRAIN DAMAGE

J. B. Neil, Lancet I(1740): 23, 3 January 1857

David Johnson, M.R.C.S.L., L.S.A., Lancet I(1744): 127, 31 January 1857

Samuel Solly, F.R.S., Lancet I(1745): 152-4, 7 February 1857

Samuel Solly, F.R.S., Lancet I(1746): 175-6, 14 February 1857

W. R. Pugh, M.D., Lancet I(1747): 200, 21 February 1857

William S. Cortis, M.R.C.S., Lancet I(1747): 202-203, 21 February 1857

John Higginbottom, F.R.S., Lancet I(1748): 228, 28 February 1857

Samuel Booth, L.S.A., Lancet I(1748): 228-9, 28 February 1857

Wm. M'Donald, Lancet I(1748): 231-232, 28 February 1857

Lancet I(1751): 302-3, 21 March 1857

Lancet I(1751): 303, 21 March 1857

Lancet I(1753): 354-5, 4 April 1857

W. N. Spong, Lancet I(1753): 360, 4 April 1857

C. W. Lyman, N. Y. Med. J. 48: 262-5, 8 September 1888

G. W. Jacoby, M.D., N. Y. Med. J. 50: 172-4, 17 August 1889

Matthew Woods, M.D., J. Amer. Med. Ass'n. XXXII(13): 683-7, 1 April 1899

L. Pierce Clark, M.D., Med. Record 71(1912): 1072-3, 29 June 1907

James L. Tracy, M.D., Med. Rev. of Reviews XXIII(12): 815-820, December 1917

James L. Tracy, M.D., N. Y. Med. J. CVII(2044): 197-9, 2 February 1918

Leon Binet, La Presse Medicale 33(9): 434-435, 31 January 1925

V. G. Longo, G. P. Von Berger, and D. Bovet, J. Pharmacology and Experimental Therapeutics 111(3): 349-359, July 1954

G. Brackbill, Psychological Bulletin 53(3): 210-226, 1956

B. Silvestrini, Archives Internationales de Pharmacodynamie et de Therapie CXVI(1-2): 71-85, 1 aout 1958

H. Hauser, B. E. Schwarz, et al., Electroenceph. and Clin. Neurophysiology X(3): 576, August 1958

H. Silvette, E. C. Hoff, P. S. Larson, and H. B. Haag, Pharmacological Reviews 14(1): 137-173, March 1962

E. J. Salber, B. MacMahon, and B. Welch, Pediatrics 29: 780-787, May 1962

A. K. Armitage, G. H. Hall, and C. F. Morrison, Nature 217(5126): 331-334, 27 January 1968

G. H. Hall, Brit. J. of Pharmacology 38(2): 271-286, February 1970

J. Friedman, T. Horvath, and R. Meares, Nature 248(5447): 455-6, 29 March 1974

K. Andersson and G. R. J. Hockey, Psychopharmacology 52(3): 223-226, 1977

D. Schalling and D. Waller, Acta Physiologica Scandinavica, Supplementum 479: 53-56, 1980

James Conrin, Clin. Electroenceph. 11(4): 180-187, October 1980

CERVICAL CANCER

D. T. Wigle, M. Grace, et al., Amer. J. Epidemiology 111(1): 125-127, January 1980

E. A. Clarke, R. W. Morgan, and A. M. Newman, Amer. J. Epidemiology 115(1): 59-66, January 1982

Donald F. Austin, M.D., M.P.H., J. Amer. Med. Ass'n. 250(4): 516-7, 22/29 July 1983

CLAUDICATION

T. B. Begg, M.B., M.R.C.P., The Practitioner 194: 202-207, February 1965

CROW'S FEET

Harry W. Daniell, M.D., F.A.C.P., Annals of Internal Med. 75(6): 873-880, December 1971

SYMPTOMS OF THE DISEASE SMOKING

Eric Hiller, Internat'l. J. of Psychoanalysis III(4): 475-480, December 1922

Lennox Johnston, M.B., Lancet 243(6225): 742, 19 December 1942

Edmund Bergler, M.D., The Psychiatric Quarterly 20(2): 297-321, April 1946

Lennox Johnston, M.B., Lancet 263(6732): 481-3, 6 September 1952

Ltc. Charles T. Brown, Texas St. J. Med. 50(1): 35-36, January 1954

Maurice J. Barry, Jr., M.D., Staff Meetings of Mayo Clinic 35(13): 386-390, 22 June 1960

Donald B. Effler, M.D., F.A.C.S., Surgery, Gynecology and Obstetrics 111(12): 232-233, August 1960

Applied Therapeutics 4(10): 891, October 1962

Peter H. Knapp, M.D., C. M. Bliss, B.A., and H. Wells, B.A., Amer. J. Psychiatry 119)10): 966-972, April 1963

M. A. Jacobs, Ph.D., Peter H. Knapp, M.D., et al., The J. of Nervous and Mental Disease 141(2): 161-171, August 1965

G. M. Hochbaum, Ph.D., Maryland St. Med. J. 14(10): 21-26, October 1965

S. M. Nugent, D.P.M., K. A. O'Keefe, D.P.M., Brit. J. of Addiction 61(1-2): 125-128, November 1965

Michael M. Miller, M.D., J. of the Nat'l. Med. Ass'n. 57(6): 48-482, November 1965

L. Stewart and N. Livson, J. of Consulting Psychology 30(3): 225-229, June 1966

B. B. Brown, Neuropsychologia 6(4): 381-388, December 1968

M. A. H. Russell, B.M., M.R.C.P., The Practitioner 212(1272): 791-800, June 1974

Hanus J. Grosz, M.D., J. Indiana St. Med. Ass'n. 71(11): 1074-1075, November 1978

Hanus J. Grosz, M.D., J. Indiana St. Med. Ass'n. 71(12): 1136-1137, December 1978

Ovide F. Pomerleau, Addictive Behaviors 6(3): 187-196, 1981

M. J. Ashley, M.D., W. J. Forbes, D.Sc., Ph.D., R. C. Frecker, M.D., Ph.D., Canadian Med. Ass'n. J. 125(10): 1077-1078, 15 November 1981

William A. Check, J. Amer. Med. Ass'n. 247(17): 2333-8, 7 May 1982

Martin Jarvis, Brit. J. Addiction 78(2): 125-130, June 1983

Lancet 2(8361): 1233-1234, 26 November 1983

EAR CANCER

H. D. Root, M.D., J. B. Aust, M.D., and A. Sullivan, M.D., New Engl. J. Med. 262(16): 819-820, 21 April 1960

FIRE SETTING BEHAVIOR

E. Pappenheim and E. Stengel, Wiener Klinische Wochenschrift 50(9/10): 354-356, 5 March 1937

M. C. Mierley, M.P.H., and S. P. Baker, M.P.H., J. Amer. Med. Ass'n. 249(11): 1466-1468, 18 March 1983

GASTRO-OESOPHAGEAL REFLUX

C. Stanciu and J. R. Bennett, Brit. Med. J. 2(5830): 793-5, 30 September 1972

GREEN TOBACCO SICKNESS

R. Weizenecker, M.D., and W. B. Deal, M.D., J. Florida Med. Assocation 57(12): 13-14, December 1970

S. H. Gehlbach, M.D., et al. J. Amer. Med. Ass'n. 229(14): 1880-1883, 30 September 1974

INFLUENZA

J. D. Kark, M.D., Ph.D., M. Lebiush, M.D., and L. Rannon, M.D., New Engl. J. Med. 307(17): 1042-6, 21 October 1982

INJURIES

Clarenca A. Mills, M.D., The Ohio St. Med. J. 46(12): 1165-1170, December 1950

George W. Ware, M.D., F.A.C.S., Med. Annals of the District of Columbia XXIX(6): 333-340, June 1960

E. Cuyler Hammond, Sci. Amer. 207(1): 39-51, July 1962

E. L. Wynder, M.D. and D. Hoffman, M.D., New Engl. J. Med. 300(16): 894-903, 19 April 1979

LOW-BACK PAIN

Med.World News 23(5): 29, 1 March 1982

LUNG CANCER

Alton Ochsner, M.D., Preventive Med. 2: 611-614, 1973

LUNG CANCER IN NONSMOKERS

D. Trichopoulos, A. Kalandidi, et al., Internat'l. J. Cancer 27(1): 1-4, 15 January 1981

T. Hirayama, Brit. Med. J. 282(6259): 183-5, 17 January 1981

G. H. Miller, Ph.D., J. Indiana St. Med. Ass'n. 76(2): 121-3, February 1983

G. H. Miller, Ph.D., Western J. of Med. 140(4): 632-5, April 1984

MEDICATION EFFECTIVENESS IMPAIRED

J. Jenne, H. Nagasawa, E. Wyse, et al., Life Sci. 17(2): 195-198, 15 July 1975

Kim Fox, A. Jonathan, H. Williams, and A. Selwyn, Brit. Med. J. 281(6234): 191-193, 19 July 1980

Kim Fox, M.D., John Deanfield, M.B., et al., New Engl. J. Med. 310(15): 951-954, 12 April 1984

ORAL/MOUTH CANCER

E. L. Wynder, I. J. Bross, and R. M. Feldman, Cancer 10: 1300-1323, 1957

D. M. Winn, Ph.D., C. M.Shy, M.D., et al., New Engl. J. Med. 304(13): 745-9, 26 March 1981

PERIODONTAL DISEASE

Wm M'Donald, Lancet I(1748): 231-232, 28 February 1857

E. J. Bergeron, Labe, p. 70, 1859

H. MacCormac, C.B.E., M.D., Proc. Royal Soc. 25: 390-391, 19 November 1931

J. J. Pindborg, J. of Dental Research 26(3): 261-4, June 1947

H. O. Solomon, D.D.S., R. L. Priore, Sc.D., I. D. J. Bross, Ph.D., J. Amer. Dental Ass'n. 77(5): 1061-4, November 1968

RADIOACTIVITY

E. P. Radford, Jr., and V. R. Hunt, Science 143(3603): 247-9, 17 January 1964

J. B. Little, E. P. Radford, Jr., H. L. McCombs, and V. R. Hunt, New Engl. J. Med. 273(25): 1343-1351, 16 December 1965

Edward A. Martell, Ph.D., American Scientist 63(4): 404-412, July-August 1975

Alan Steinfeld, M.D., American Family Physician 22(4): 95-99, October 1980

T. H. Winters, M.D. and J. R. Di Franza, M.D., New Engl. J. Med. 306(6): 364-5, 11 February 1982

Edward A. Martell, Ph.D., New Engl. J. Med. 307(5): 309-310, 29 July 1982

R. T. Ravenholt, M.D., M.P.H., New Engl. J. Med. 307(5): 312, 29 July 1982

Edward A. Martell, Ph.D., Proc. Nat'l. Acad. of Sci. 80(3): 1285-9, March 1983

RAYNAUD'S DISEASE

Brit. Med. J. 3(5830): 782-3, 30 September 1972

T. S. Bocanegra, M.D. and L. R. Espinoza, M.D., New Engl. J. Med. 303(24): 1419, 11 December 1980

RESPIRATORY DISEASE

Milit.Med. 135(8): 678-681, August 1970

Milit.Med. 142(5): 397-8, May 1977

SMALL-AIRWAYS DYSFUNCTION

James R. White, Ph.D. and Herman F. Froeb, M.D., New Engl. J. Med. 302(13): 720-3, 27 March 1980

TESTICULAR VARICOCELES/ABNORMALITIES

Wm. M'Donald, Lancet I(1748): 231-232, 28 February 1857

John W. Tripe, Lancet I(1753): 359-360, 4 April 1857

R. T. Ravenholt, M.D., M. J. Levinski, P.H.N., D. J. Nellist, and M. Takenaga, Amer. J. Obst. & Gynec. 96(2): 267-281, 15 September 1966

E. L. Klaiber, M.D., D. M. Broverman, Ph.D., and W. Vogel, Ph.D., Fertility and Sterility 34(1): 64-5, July 1980

H. J. Evans, J. Fletcher, M. Torrance, and T. B. Hargreave, Lancet I(8221): 627-9, 21 March 1981

SPINOCEREBELLAR ATAXIA

John D. Spillane, M.D., F.A.C.P., Brit. Med. J. 2(4952): 1345-1351, 3 December 1955

THROMBOANGIITIS OBLITERANS

Willy Meyer, M.D., Med. Record 97(2575): 425-430, 13 March 1920

REFERENCE BOOKS

Benjamin H. Rush, M.D. Essays, 2d. ed. Philadelphia: Thomas and William Bradford, 1806.

John H. Kellogg, M.D. Tobaccoism, or How Tobacco Kills. The Modern Medicine Publishing Co., 1927.

Lyle Tussing, Ph.D. Psychology for Better Living. New York: John Wiley & Sons, Inc., 1959.

Allen D. Calvin, et al. Psychology. Allyn & Bacon, Inc., 1961.

Ernest R. Hilgard. Introduction to Psychology, 3rd ed. New York: Harcourt, Brace & World, Inc., 1962.

Ernest R. Hilgard and Richard C. Atkinson. Introduction to Psychology, 4th ed. New York: Harcourt, Brace & World, Inc., 1967.

James C. Coleman, Ph.D. Abnormal Psychology and Modern Life, 5th ed. Chicago: Scott, Foresman and Co., 1976.

Diagnostic and Statistical Manual of Mental Disorders, 3rd ed. New York: American Psychiatric Association, 1980.

Andrew J. DuBrin, Ph.D. Managerial Deviance: How to Deal with Problem People in Key Jobs. New York: Mason/Charter, 1976.

Silvano Arieti, M.D. Understanding and Helping the Schizophrenic. New York: Basic Books, 1979.

Kayla Bernheim, Ph.D. and Richard Lewine, Ph.D. Schizophrenia: Symptoms, Causes, Treatments. New York: W. W. Norton & Co., 1979.

Anthony Hopkins. Epilepsy: the facts. New York: Oxford University Press, 1981.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:	)	
	)	
Leroy J. Pletten	)	
	)	
v.	)	JUN 7 1985
	)	
Office of Personnel Management	)	

MOTION TO APPOINT AN ATTORNEY FOR ME FROM
THE U.S. ATTORNEY'S OFFICE
BASED ON THE CORRUPT LOCAL/MSPB PATTERN

NOW COMES the Appellant, Leroy J. Pletten, and moves that an attorney be appointed from the U.S. Attorney's office, based upon the data including but not limited to the following:

1. The extortion by Col. Benacquista is clear and undisputed. Note his deposition, pp. 13, 62-63. That the ouster in reaction to my winning the 25 January 1980 USACARA Report, and the MSPB defenses thereof, is designed to aid and abet that unlawful behavior is clear and undisputed.

2. MSPB and local "group association" misconduct is still continuing, and there are violations of rules of law by local and MSPB offenderss. See precedents for guidance and principles of law, including but not limited to those of:

U.S. v. Browning, 630 F.2d 694 (1980)
State v. Weleck, 18 N.J. 355, 91 A.2d 751 (1952)
U.S. v. Ragsdale, 438 F.2d 21 (1971)
Luteran v. U.S., 93 F.2d 395 (1937)
U.S. v. Hoffman, 498 F.2d 879 (1974)
U.S. v. Barr, 295 F.Supp. 889 (1969)
Culp v. U.S., 131 F.2d 93 (1942)
U.S. v. Ellis, 595 F.2d 154 (1979)
U.S. v. Barrow, 363 F.2d 62 (1966)
U.S. v. Marshall, 488 F.2d 1169 (1973); etc.

3. MSPB has refused to discuss the merits, and has fixated on a fragment. As noted in the 10 May 1985 appeal, there has been a corrupt decision to disregard multiple aspects of the case: that smoking is a disease; the "unqualified and absolute" safety duty; that smoking is not part of employment; etc.

4. The installation/MSPB "group association" corruption is this: that they label me "not ready, willing, and able" to do what "Workmen are not employed to" do (smoke), MTM Co. v. MCP Corp., 49 F.2d 146 at 150 (1931). Their deviance (corruption, bribery, alcoholism, and/or mental disease(s), etc.) is clear.

5. Note that "'In criminal law the phrase "aiding and abetting" is used to describe all forms of assistance rendered to the perpetrator of a crime. This term comprehends all words or deeds which may support, encourage or incite the commission of a crime . . . ." (citations omitted), People v. Turner, 125 Mich.App. 8, 336 N.W.2d 217 at 218 (1983). The process includes the support, encouragement, and/or incitement from MSPB officials (M. Baumgaertner in 1980, the falsehoods from R. Wertheim, et al. in 1981, disregard of law and facts as EEOC noted, and continuing thereafter to the present) on behalf of the initial and continuing local crimes.

6. Local and/or MSPB officials will foreseeably render successful my case under principles of law noted in such cases as the following:

Brant ex dem. Buckbee v. Fowler, 7 Cow. 562 (N.Y., 1827)
Central of Georgia Ry. Co. v. Hammond, 109 Ga. 383, 34 S.E. 594 (1899)
Hedican v. Penn. Fire Ins. Co., 21 Wash. 488, 58 P. 574 (1899)
Detroit & T. S. L. R. Co. v. Campbell, 140 Mich. 384 at 399, 103 N.W. 856 (1905)
State v. Strodemier, 41 Wash. 159, 83 P. 22 (1905)
Bilton v. Territory, 1 Okla.Crim. 566, 99 P. 163 (1909)
Com. v. Fisher, 226 Pa. 189, 75 A. 204 (1910)
Underwood v. Old Colony St. Ry. Co., 31 R.I. 253, 76 A. 766 (1910)
Myers v. State, 111 Ark. 399, 163 S.W. 1177 (1914)
State v. Applegate, 28 N.D. 395, 149 N.W. 356 (1914)
State v. Ovitt, 126 Vt. 320, 229 A.2d 237 (1967), etc.

7. Since the record raises issues of criminal law, beyond the merely civil law appeal which would otherwise exist, the interests of the U.S. government must be represented. Further data in support of this motion is incorporated by reference.

The corrupt and unlawful behavior of MSPB officials on a continuing basis over a period of years, is clear and undisputed. State v. Weleck, 18 N.J. 355, 91 A.2d 751 (1952), provides insight consistent with 18 USC 3, 18 USC 4, 18 USC 1961, etc. Col. Benacquista's extortion is clear, demanding that I alter my anticipated testimony, in exchange for a halt to the overruling of the examining doctors, "All he had to do was to say, 'I agree that this is reasonably free of contaminants," (Dep. p. 62), despite the data confirming the hazard from the installation's own physician, Dr. Holt (Dep. pp. 25, 41-42) "there's a hazard for all these other people . . . . Yes. Yes. . . . People smoking in their vicinity is hazardous to them."

The MSPB continuing behavior pattern is not merely at the "accessory" level; it is not merely at the "misprision of a felony" level, though it includes all this. The MSPB continuing behavior pattern is not merely passive, but actively involved in the criminal pattern, including the ex parte communications, the actively inventing claims of actions taken, active diversion tactics off the merits, actively soliciting and procuring false and misleading installation input, etc. MSPB actively engages in the overruling of the examining doctors. It actively claims that this is a "medical" case instead of a safety hazard/excused absence case. It actively engages in avoidance of mentioning the multiple admissions against interest by installation officials: Gen. Stallings not having read the regulation; Dr. Holt's admission concerning the hazard and excused absence; C. Averhart's admission on servicing 1/5 the site; E. Braun's admission on the hazard; etc., and the ex parte actions by E. Hoover and J. Benacquista contrary to the principles of Sullivan v. Navy, 720 F.2d 1266 (1984).

MSPB officials' crimes, in addition to all the others, include disregarding the confessions obtained from the installation offenders. Misprision of felonies is clear; and the reason is clear too— MSPB officials' actions on the felonies have been compromised by MSPB's own felonies. MSPB officials resist exposing J. Benacquista, since he would foreseeably react by taking them along with him, as his active accomplices. Note Weleck, supra, at 757, "it is a well recognized fact that certain basic duties are of necessity common to a wide variety of officers." For example, note "a common responsibility for the enforcement of the criminal law." When crimes such as extortion arise in an MSPB case, laws such as the above, make MSPB's duty clear. But MSPB has been compromised so as to resist doing its duty. MSPB officials are not "'impervious to'" corruption, Weleck, at 757.

Weleck, supra, at 759, cites precedents indicating, "Extortion, in a comprehensive sense, signifies any oppression under color of right. Russell on Crimes, 305," and "in its larger sense it signifies any oppression under color of right." Col. Benacquista's behavior clearly meets that definition, as well as the Michigan definition concerning a demand for alteration of anticipated testimony, People v. Atcher, 65 Mich.App. 734, 238 N.W.2d 389 (1975). Insight on the overall MSPB corrupt pattern, including offenses cited in 18 USC 1961, is given by Weleck, p. 760, "The overt acts necessary to constitute" a crime "must be viewed in the light of the intended crime." MSPB officials engaged in ex parte communications, lied, disregarded the merits, etc. The lying is the key; that alone "would suffice" for convicting MSPB officials.

U.S. v. Ragsdale, 438 F.2d 21 (CA 5, 1971), provides insight on the criminal matters herein discussed. P. 25 notes the federal constitutional law violation of giving "a choice" to a person: "due process of law" or "summary punishment."

J. Benacquista committed the violation, as "by his own testimony" he admits against interest. His attitude which provides insist concerning his unlawful intent is clear, denouncing AR 1-8, "It doesn't make sense to have a Command getting involved in the personal habits of its employees . . ." (Dep., p. 25).

AR 1-8 says a hazard from tobacco smoke is foreseeable, in its broadest intendement. The installation's own doctor confirmed the hazard, citing that "mechanical failures happen all the time" (Dep., p. 25). P. 42 states, "there's a hazard for all these other people . . . . Yes. Yes." Dr. Holt interrupted to emphasize, distinctly, the common "universal malice" hazard, "People smoking in their vicinity is hazardous to them."

When there is a hazard, the legal duty is to obey the "unqualified and absolute" safety duty. J. Benacquista feels that it "doesn't make sense." He is aware of the on-site hazard, and the foresseable reaction, "other complaints of people with regard to smoking in the area . . . I understand there were others." My professional training led me to success with the 25 January 1980 USACARA Report, commanding the beginning of the compliance process.

J. Benacquista admitted what happened then, as part of "the sequence leading up to, I guess, the time when the suspension came about --" (Dep., p. 47). The rules were considered as not making sense; to obstruct compliance, the decision was made to discharge me immediately to prevent any precedent of compliance.

Ragsdale, supra, cites the giving of an unlawful choice: "due process of law" or "summary punishment." J. Benacquista, Dep., pp. 62-63, notes the choice provided to me, "The job was available. All he had to do was to say, 'I agree that this is reasonably free of contaminants.'" Say it, or not say it. That was the unlawful choice. It was put to me, because of his criminal choice to defy the rules and laws. J. Benacquista did not want to do his duty, to deal with the hazard. So extortion was decided upon. J. Benacquista is guilty. See Ragsdale, p. 25, "The problem for the defendant here . . . is the uncontradicted evidence, including" his "own testimony, which establishes the motive, intent and purpose of his summary punishment of this" victim. At 26, "the unvarnished truth disclosed by the record" is this, "that, if" Pletten would not "chose to forego his . . . right" to implementation of the rules and USACARA Report, "he," Benacquista, "would take the law into his own hands and act summarily as" overruler of the rules, and as a superdoctor overruling the imput from the examining doctors emphasizing Pletten's ability to work.

J. Benacquista's misconduct was done "as an alternative to instituting a proceeding" of appeal of the 25 Jan. 1980 USACARA Report, and the rules, cf. NAACP v. DPOA, 591 F.Supp. 1194 at 1201, n. 7 (D.E.D.Mich., 1984).

4 of 10

Denial of Due Process

JUN 7 1985

Precedents including Luteran v. U.S., 93 F.2d 395 (1937), Culp v. U.S., 131 F.2d 93 (1942); and U.S. v. Ellis, 595 F.2d 154 (1979), illustrate principles concerning group association misconduct of a common understanding to do nothing about misconduct, false charges, etc., which reviewers are responsible to deal with impartially. Here, there is a "common understanding" among local and MSPB officials to disregard the installation misconduct, and that MSPB is willing to engage in additional misconduct to uphold the installation misconduct.

U.S. v. Hoffman, 498 F.2d 879 (CA 7, 1974), illustrates the misconduct well. Recall the 23 Feb. 1982 EEOC decision noting my successful grievance, refusal of implementation, and summary local rejection of my repeated pleas for implementation. Recall the 9 April 1980 local EEOC letter taking note of the summary termination that jad just occurred. Recall the 8 April 1983 EEOC decision noting disregard of the USACARA Report and AR 1-8 guidance, and the refusal to allow review of my ouster. Clearly, proper procedures were not used in ousting me without notice, and without specificity.

Hoffman, supra, at 882, indicates a principle applicable to the summary behavior of the installation, "The essence of their federal offense is precisely that they" used "coercive means while bypassing the procedures designed to protect the rights of" federal employees, and Americans. Col. Benacquista admitted against interest his demand that I retract reference to the hazard on-site (Dep., pp. 62-63). It is undisputed that a hearing was not provided to me; and EEOC has already noted the ill effects of that refusal. It is clear that installation offenders used "coercive means" (extortion), "while bypassing the" hearing and advance notice and specificity "procedures designed to protect the rights" involved.

Review by MSPB was effectively blocked by the group association of local and MSPB personnel. The 23 Feb. 1982 EEOC decision shows refusal of processing of my requests for help through EEO channels. The installation used false statements and other misconduct for the purpose of "bypassing the procedures designed to protect the rights of" workers such as me.

Even if the offenders were now suddenly to halt their misconduct, nonetheless, years have gone by. Even efforts to correct the situation (if made, which they are not being made), such would and "does not cure the deprivation of" my "constitutional right," U.S. v. Barr, 295 F.Supp. 889 at 892 (1969).

Hoffman, supra, at 882, continues, they "inflicted summary punishment under color of law, thus willfully intending to deprive their victims of due process of law. Crews v. United States, 160 F.2d 746, 749-750 . . . United States v. Delerme, 457 F.2d 156, 161." And "it is immaterial that defendants may have received personal gratification." The convictions were upheld.

5 of 10

The crimes herein complained of arise from installation and MSPB early group association ex parte communications "'advising or procuring false testimony or statements,'" cf. U.S. v. Browning, 630 F.2d 694 at 701 (1980), and citations therein. The essence of what J. Benacquista, B. Hoover, M. Baumgaertner, R. Wertheim, etc. were doing, was denial of due process and equal protection of the laws. Denying a person a trial by the use of illegal methods is clearly unlawful and unconstitutional. An apt case comes to mind: U.S. v. Barr, 295 F.Supp. 889 (1969). Making of false statements to obstruct the right to an opportunity to be heard, starts corruptly, just as here, i.e., by the making of ex parte communications. The use of ex parte communications in Barr, and here, involved falsehoods by installation and MSPB offenders. EEOC accurately noted the falsehoods, in its 8 April 1983 decision.

The named offenders set the illegal process in motion. M. Baumgaertner of MSPB is clearly guilty of involving MSPB in the illegal group association, as evidenced by the documentation showing him as the individual of record in the early stages of the group association. When he set the unlawful MSPB involvement in the group association in motion, "Precisely what happened is what might have been expected," hence, "Malice is presumed under such conditions," Nestlerode v. U.S., 122 F.2d 56 at 59 (1941).

U.S. v. Barr, 295 F.Supp. at 891 states, "the opportunity to respond and to be heard is the very essence of the administration of justice, and the deprivation of these fundamentals is clearly a deprivation of one's constitutional right to due process of law under the Fourteenth Amendment." In that case, just as here, falsehoods were used to obstruct due process. Installation and MSPB officials lied, knew they lied, and refuse to cite that EEOC caught their lying. MSPB's post 8 April 1983 decisions omit that EEOC found MSPB disregard on both the law and on the facts. The installation and MSPB "'Misuse of power, possessed by virtue of . . . law and made possible only because the wrongdoer is clothed with the authority of . . . law, is action taken "under color of" . . . law,'" p. 891. Cf. 18 U.S.C. 241, as distinct and additional data above and beyond the pattern of misconduct covered by 18 U.S.C. 1961 et seq.

Installation and MSPB offenders have no defense; they have presented no defense for their misconduct. There is no defense. The misconduct and group association is "still in progress," apt words from Andersen v. U.S., 417 U.S. 211 at 218, 94 S.Ct. 2253 at 2259, 41 L.Ed.2d 21 (1974). In the group association, of installation and MSPB ex parte communicators, "the law deems them agents of one another," n. 6.

Installation and MSPB offenders have no defense. They cannot allege that even approving the current case would "cure the deprivation of . . . constitutional right," U.S. v. Barr, at 892. Moreover, here, worse than the then-potential harm to the victims (cited as economic, p. 892), here the economic and legal harm has already occurred. The removal is now years in the past. The refusal of review has been in process for years. "This" alone (apart from other harm) "is such a clear" violation "without" advance "notice" and "without . . . opportunity to be heard as to amount to an egregious violation of due process of law."

Here, as in U.S. v. Barr, 295 F.Supp. 889 (1969), lies were devised to uphold obstruction of justice, i.e., the right to be heard. EEOC noted the hideous and vile effects of the misconduct by persons such as M. Baumgaertner, R. Wertheim, etc.: i.e., false claims were made of completed actions when such had not even been "attempted," data from EEOC 8 April 1983, p. 5.

The misconduct of MSPB officials is especially heinous, for two reasons among others. No doubt "sewer service" is an evil, even a constitutional evil, but such misconduct is not the #1 preventable cause of death. Here, the MSPB falsehoods relate to a hazard that commonly, daily, causes death. Sewer service is an evil; it involves saying that something happened that did not happen. MSPB officials such as R. Wertheim are liars and scoundrels, no doubt, cf. Bishop v. Strout Rlty, 1 2 F.2d 503.

But the behavior of MSPB liars and scoundrels is especially heinous, for a second reason. See Luteran v. U.S., 93 F.2d 395 at 398 (1937). A conviction was upheld of a government official who simply chose to do nothing to resolve misconduct of which he was aware. That government official was a do-nothing policeman. His claim was that "the fact that the conduct of the . . . officials . . . was dishonest cannot be attributed to him, even though he might have been able to interfere and defeat the" misconduct "if he had been inclined to do so." Here, M. Baumgaertner, R. Wertheim, V. Russell, S. Manrose, etc., have presented no defense at all for their misconduct. They have no defense; they are guilty. At 399, "Every hypothesis of innocence is destroyed by" their "knowledge of the manner in which" the local TACOM offenders "behaved."

EEOC on 23 February 1982 and 8 April 1983 aptly summarized what happened, i.e., "the manner in which" TACOM "behaved." The key points EEOC made include my winning the 25 Jan. 1980 USACARA Report; TACOM non-implementation thereof; my requests for local EEO office counseling and help as a result; TACOM obstruction measures and tactics including refusing to process those requests based on their misrepresenting my timeliness; my persistence as the Army had trained me in rule enforcement; and then the brutal, sadistic, and depraved "suspension or termination" on 17 March 1980, without advance notice, without specificity, without citing any qualification requirement for tobacco smoke, and with the active assistance of MSPB officials via multiple ex parte communications despite the clear prohibition of such.

M. Baumgaertner "might have been able to interfere and defeat the" TACOM misconduct in terms of the ouster "if he had been inclined to do so." His behavior was worse than that of the offending, do-nothing policeman in Luteran, supra. The policeman had not "refused to help any one who requested his aid." M. Baumgaertner "refused to help" me. M. Baumgaertner's misconduct was so egregious, that R. Wertheim, etc. concluded that lying was necessary to obscure the misconduct by M. Baumgaertner. Fortunately for me, EEOC noted and documented all these violations. Now we need the next step, the criminal prosecutions of MSPB offenders, starting with M. Baumgaertner.

Extortion, obstruction of justice, falsifying official documents, embezzlement, bribery, murder (and acts involving racketeering, 18 USC 1961) are malum in se, as distinct from malum prohibitum. MSPB officials including but not limited to R. Wertheim, placed false statements in the 18 June 1981 decision, for the purpose of obstructing my right to due process, a hearing. The EEOC has already noted the falsehoods, and the disregard of the applicable standards of proof. Why did MSPB officials lie? No doubt they were compromised by their own personal corrupt behavior in having engaged in a "group association" with installation officials, on an ex parte basis, which is still continuing.

Moreover, note U.S. v. Ragsdale, 438 F.2d 21 at 25-26 (CA 5, 1971), citing an unlawful choice given by a government official: "due process of law" or "summary punishment"/decision. MSPB officials such as R. Wertheim had "an alternative to" falsifying the official document (the 18 June 1981 issuance). They had the "alternative" of remanding for a hearing, as in Mosely v. Navy, 4 MSPB 220 (1980), cited therein. Instead, each corrupt MSPB official chose to "take the law into his own hands and act summarily . . . as an alternative" to holding a hearing, and to placing true information in the issuance that would be forthcoming.

MSPB officials chose the "alternative" of falsification in violation of 18 USC 1001, and under the circumstances of this case, in violation of 18 USC 1961 as discussed herein. MSPB officials chose the "alternative" of falsification, instead of acting with integrity, for example, of seeking declaratory relief from the duty of holding a hearing, repeatedly requested; cf. NAACP v. DPOA, 591 F.Supp. 1194 at 1201, n. 7 (D.E.D.Mich., 1984).

There is no evidence of any defense by installation and MSPB officials for their wrongdoing. They have no defense, and have presented none. They have not availed themselves of defense opportunities such as that granted by EEOC on 23 Feb. 1982 (a 30 day time period).

Due process "has proven essential to our concept of ordered liberty. When officials have attempted to justify . . . methods that ignore the strictures of" due process, "such excuses have proven fruitless, for the Constitution brands such conduct as lawless, irrespective of the end to be served. Throughout the years the Supreme Court of the United States, regardless of changes in its composition or contemporary issues, has steadfastly applied the Amendment . . . . No right so fundamental should now, after the long struggle against governmental trespass, be diluted to accommodate conduct of the very type the Amendment was designed to outlaw," U.S. v. Ehrlichman, 376 F.Supp. 29 at 32 (D.D.C., 1974).

MSPB criminals emphasize accommodation, because they want their criminal behavior accommodated, not because they have found any of the threshold conditions precedent for an accommodation case. A right as fundamental as due process must not be diluted, and especially not by the use of brazen falsehoods, such as the MSPB-installation "group association" have decided upon as "excuses."

The local and MSPB group association conduct is worse than the falsication problem noted in U.S. v. Barr, 295 F.Supp. 889 (1969). There, offenders made false claims that people were served with notices of a pending case. Here, the misconduct went to the extreme of even denying that there was a "suspension or termination" (EEOC's accurate 8 April 1983 words) at all. Denying that there is a case at all, is far more destructive than lying about having served papers concerning a case. The denial that there even was a case, was what EEOC rejected. Since MSPB was wrong (M. Baumgaertner had wrongfully denied my appeal), other MSPB officials such as R. Wertheim, etc., decided to lie to cover up M. Baumgaertner's misconduct. Thus, they lied by claiming that non-existent events had occurred, but which had not even been "attempted," as EEOC pointed out 8 April 1983.

The MSPB behavior pattern, starting with M. Baumgartner's misconduct, is "an egregious deprivation of due process of law," Barr, at 892, since it deprives the victim (me) of "opportunity to defend." The corruption case of Culp v. U.S., 131 F.2d 93 (CA 8, 1942) provides insight. That case, like this one, involves the filing of false charges against people, for an extortion purpose. Here, Col. Benacquista has already admitted the extortion purpose, the demand that I alter my anticipated testimony concerning the hasard.

Culp and his group association, p. 96, engaged in "deprivation of rights, privileges and immunities secured to" Americans "and protected by the Constitution and laws of the United States." The violations involve disregard of "the right and privilege of being free from . . . restraint of . . . liberty, save and except by due process of law, the right and privilege of being free from intimidation and unlawful assault on their persons . . . the right to have a speedy . . . trial, the right to be confronted with the witnesses against them . . . the right and privilege of being secure in their persons, property, and effects . . . ."

Such violations as the Culp group association committed are evident here. False charges were made for extortion purposes. The key phrase is "false charges." Here, the local and MSPB charges are definitely false. EEOC has already verified the falsity.

In Culp, supra, "long periods of time" during which the offenses were committed, were noted. Here, far more time has already gone by. In that case the offenses went on from 1 January 1937 - 1 January 1941 (four years). The "long periods" for any individual victim, was less than the period here, continuing beyond five years. Clearly, criminal prosecution of the installation and MSPB offenders is imperative.

Culp, at 97, notes the two phases of the falisification process. Phase one is the "false charges." Phase two involves false entries concerning the disposition of the false charges, "to make it appear upon the dockets" of the deciding officials that the false charges had been upheld. Here, both phases of this corruption are clear and undisputed. EEOC and other reviewers have noted the local and MSPB falsification pattern (in both phases).

JUN. 7 1985

U.S. v. Culp, 131 F.2d 93 at 96-97 (CA 8, 1942), well describes how a corrupt group association of offenders conduct themselves under color of law. There are two roles involved, (a) by people who bring "false charges," and (b) by people who make false entries concerning the disposition of the false charges, "to make it appear upon the dockets" that the false charges had been upheld. Such misconduct is what transpired here. Local officials made false charges, and MSPB officials made false claims in upholding the false charges.

Note U.S. v. Ellis, 595 F.2d 154 at 160 (CA 3, 1979), citing U.S. v. Barrow, 363 F.2d 62 at 64 (1966), cert. denied, 385 U.S. 1001 (1967), "the activities of the participants in the criminal venture could not have been carried on except as the result of a preconceived scheme or common understanding."

It is clear from the behavior of installation and MSPB offenders that their group association has "a preconceived scheme or common understanding" to avoid reference to the threshold condition precedent for a disqualification case--a qualification requirement. They have "a preconceived scheme or common understanding" to avoid reference to the Handbook X-118, the medical employment test forms, and the job description, none of which require tobacco smoke.

It is clear from the behavior pattern that they have "a preconceived scheme or common understanding" to avoid reference to the "unqualified and absolute" safety duty mandating control of hazards.

They have "a preconceived scheme or common understanding" to avoid mentioning that excused absence applies when there is a hazard.

It is clear from the behavior pattern of installation and MSPB offenders that they have "a preconceived scheme or common understanding" to avoid noting the distinction between not permitting smoking behavior, and banning smoking behavior. (As AR 1-8 makes clear, and as USACARA and EEOC have pointed out, smoking is not to be permitted when the threshold conditions precedent are unmet; i.e., that smoke is not being removed, that nonsmokers are endangered, that nonsmokers are discomforted, etc. Here, there is a common hazard, as the installation's own witness, Dr. Holt, admitted against interest).

They have "a preconceived scheme or common understanding" to avoid mentioning the common danger admitted by Dr. Holt.

They have "a preconceived scheme or common understanding" that MSPB officials will be, and are, receptive to false input from the installation.

Overall, they have demonstrated that they "seem quite willing to make false" charges and docket entries "in which facts are distorted to achieve a result," U.S. v. Marshall, 488 F.2d 1169 at 1171 (CA 9, 1973).

Wherefore this motion is made.

10 of 10

Leroy J. Pletten

91
249

DISPOSITION FORM

For use of this form, see AR 340-15, the proponent agency is TAGCEN.

REFERENCE OR OFFICE SYMBOL	SUBJECT
	Repeat Request for Compliance with FPM Suppl. 752-1, S1-6c(4)(d)

TO Act C, P & P M Br. (DRSTA-ALS) FROM Leroy J. Pletten (DRSTA-ALS) DATE 10 May 1985 CMT 1

1. Reference the OPM decision dated 4-17-85, confirming and elaborating its 5 Oct. 1981 denying the agency-initiated disability retirement. As you know, TACOM did not provide any advance notice and specificity, i.e., "did not identify any duties of" my "position which" I am allegedly "unable to perform." The agency-initiated ouster and application were void ab initio for lack of specificity.

2. Please note the similar 6 April 1983 and 18 June 1984 OWCP analyses that the evidence from the examining doctors is "consistent and clear evidence" of my being "able to return to work" in March 1980. As you know, my 23 Aug. 1984 request for restoration to duty status pointed that out.

3. Dr. Salomon on 8 July 1981 and Dr. Dubin on 12 Oct. 1983 point out that you should have let me return to duty when MSPB officials asserted that you were in "compliance with health standards." You will recall my 7-7-81 memo seeking return to duty on that basis. You will also recall my 11-18-81 request, and the many, many others.

4. Please note that the above cited regulation rejects "the action of the agency in continuing the employee in a leave-without-pay status . . . after receiving notice . . . that its application for the employee's disability retirement had been rejected." The refusal to have "returned the employee to duty" and to have "placed him in a nonduty status with pay, without charge to leave, while taking appropriate action" such as recommended by USACARA 25 Jan. 1980, or by EEOC 23 Feb. 1982 and 6 Apr. 1983 is "equivalent to suspension." Be advised that the agency application for my disability retirement has been rejected again, 4-17-85.

5. As you know, I have repeatedly returned to work, and have been turned away, on the basis of the order that Col. Benacquista gave.

6. I continue to have an unrestricted ability to work, as you all know. See the 30 January 1984 OPM letter, and the 11 Nov. 1983 EIA amicus brief. Note the input confirming ability to work in a safe job site, referenced by EEOC 8 Apr. 1983.

7. As I notified EEO, I continue to be available to begin the resolution process. Please advise when you are willing to begin.

8. As previously requested, please restore me to duty retroactive to March 1980, and let me know when to return.

Sincerely yours,

Leroy J. Pletten

Leroy J. Pletten
Pos Class Spec

RECEIVED
13 MAY 1985
Tarcom Equal Employment Opportunity Office

DA FORM 1 FEB 62 2496 REPLACES DD FORM 96, WHICH IS OBSOLETE. ☆ U.S.GPO:1978-0-665-041: 344

250