Statement of Leroy J. Pletten, Dept of the Army
Whistleblower, to the NO FEAR Tribunal

Good morning Congresswoman Sheila Lee Jackson and Congressional Members. It is my pleasure to appear before you today — for the first time.

1. **Biography**: August 1969, I received employment at the GS-7 level in the Department of Army, Tank-Automotive Command (TACOM) in Michigan. Due to my excellent performance, TACOM rapidly promoted me five grades, to the GS-12 level, June 1974. My positions were in Human Resources and as a Crime Prevention Officer. I have a B.A., 33 credits toward a master's degree, and agency human resources courses. At the relevant time, I was age 33 with flawless performance/attendance record, and awards for same.

2. Reported Injury or Violation(s): I blew the whistle on a combination of hazardous activity toxic emissions gateway drug use. Same was occurring in violation of, e.g., 5 U.S.C. § 7902(d), 29 U.S.C. § 651 et seq, 29 C.F.R.§1910.1000.Z, 32 C.F.R. § 203; Army Reg. 1-8, MCL § 750.27, MSA § 28.216, etc. The subject matter is an underlying factor in the money trail supporting terrorism. TACOM's safety office management was falsifying records regarding the legal maximum limit (like a speed limit). For example, 42,000 would be reported as 4.2. Coworkers were complaining; at least one in my area was injured and received worker compensation funds; another died. Michigan's Governor advised me that some 15,000 Michiganders were being killed.

Army Reg. 385-10 is "emphasizing personnel responsibility for" "reporting unsafe or unhealthful conditions." Compliant thereto, I blew the whistle within the Army system and chain of command (i.e., Supervisor, Safety, Inspector General, Army Civilian Appellate Review Office (USACARO), Medical, EEO, Police, and Commanding General 'open door' policy). I was supported by my immediate supervisor, who was planning on speedy transfer out of TACOM. I developed a

proposed list of actions to bring TACOM in the direction of initiating compliance. My immediate supervisor forwarded the list to Higher Management, which refused to implement same. Some months later, January 1980, the aforesaid USACARO ruled in my favor, directed TACOM to come into compliance. [See parallel decision, *Dept of HEW, Soc Sec Admin* v *AFGE Local 1923*, 82-1 Lab Arb Awards (CCH) § 8206 Jan 1982).] Under Army regulations, e.g., Civ. Pers. Reg. 700.771, upheld in *Spann* v *McKenna*, 615 F.2d 137 (CA 3, 1980), compliance is mandatory. However, as revealed in subsequent cross-examination, TACOM higher management did NOT agree with the regulations, thus refused to initiate compliance actions.

3. Reprisal/Retaliation:

Instead, TACOM management subjected me to a pattern of attacking the messenger, via reprehensible retaliatory actions:

a. Harassment by being denounced in TACOM newspaper (later cited by EEOC).

b. Extortion in the form of demanding that I cease and desist blowing the whistle (extortion violates both federal and Michigan criminal law, see e.g., *People* v *Atcher*, 65 Mich. App. 734 [238 NW2d 389] (1975) on witness intimidation, and *U.S.* v *Welford*, 710 F2d 439 (CA 8, 1983).

c. TACOM suspended me from duty without pay, imposed enforced leave retroactively, without providing notice of charges nor opportunity to reply. The Army itself subsequently admits, via Capt Scott D. Cooper in *Military Law Review*, Vol. 118, pp 143 et seq. (Fall 1987), footnote 206 that its action "is no longer good law; after *Valentine* v. *Department of Transportation*, 31 M.S.P.B. 358 (1986), enforced leave is now an adverse action)," yet refuses to correct its self-admitted error [refuses to file a "confession of error" pursuant to case law, e.g., *U.S. v Graham*, 688 F2d 746 (CA 11, 1982). Note also case law such as *Agostini* v *Felton*, 521 US 203 (1997) (reversal after 12 years, as per intervening decisions, prior decision no longer good law); and "intervening change in the legal

atmosphere that it renders the bar of collateral estoppel [purported prior review] inapplicable in this case," a concept from *Texaco Inc* v *U.S.*, 217 Ct Cl 416; 579 F2d 614 (1978), cited in *Wilson* v *Turnage*, 791 F2d 157 (CA Fed, 1986), also a federal employee case].

d. TACOM placed me on forced LWOP in violation of TACOM Reg. 600.5-14.

e. TACOM ordered me to submit to an involuntary psychiatric examination, contrary to anti-reprisal rules and case law, e.g., *Standard Knapp Div* v *IAM*, 50 Lab Arb Rpts (BNA) 833 (1968).

f. The results of same in my favor were summarily disregarded by TACOM.

g. The pay cancellation/ouster was effected without providing me advance notice (30 days) of charges against me. Refusing an employee a statement of charges violates federal law 5 U.S.C. § 7513, and constitutional due process, *Cleveland Bd. of Ed.* v *Loudermill*, 470 U.S. 532 (1985); *Pittman* v *Army and MSPB*, 832 F2d 598 (CA Fed, 1987).

h. TACOM refused to allow me onto, barred me from entering, TACOM premises.

i. TACOM refused to notify me of my appeal/review rights, contrary to rules and precedent, e.g., *Miyai* v *D.O.T.*, 32 MSPR 15, 20 (8 December 1986).

j. TACOM cancelled my access to the EEOC review process (verified by EEOC). [This violation occurred despite the fact that discharge, "the most serious sanction an employer can impose," requires "special care in handling" review, *Tenorio* v *N.L.R.B.*, 680 F.2d 598, 602 (9th Cir., 1982).]

k. TACOM denied my right to EEO counseling (verified by EEOC)

l. TACOM denied my right to EEO investigation (verified by EEOC).

m. The one EEO investigation that did begin some time later was summarily cancelled by a TACOM lawyer who falsely claimed an EEOC hearing would be held (without an investigation report no less!. No such hearing has ever been held, with or without investigation).

n. TACOM refused me a copy of the witness affidavits that had been collected in the aforesaid aborted investigation process.

o. TACOM refused to obey EEOC processing orders which directed review on merits, starting in February 1982, both directly and via the later M.S.P.B. forum, e.g., at 83 FEOR 3046.

p. TACOM management filed an application to involuntarily force me into retirement, and promoted two co-workers who aided and abetted management in this.

q. O.P.M. correctly rejected the TACOM application by ruling in my favor to allow me to keep working. In retaliation, TACOM disregarded said O.P.M. ruling, refused to reinstate me to duty, disregarding the rule of law including a number of Comptroller General precedents, e.g., 38 Comp Gen 203 (1958), 39 Comp Gen 154 (1959), and 41 Comp Gen 774 (1962).

r. TACOM opposed my right to receive unemployment benefits, and thus fraudulently secured a denial of benefits for some six months. The denial decision was then overturned, and ruling entered in my favor once a state-examiner hearing was held by a Michigan unemployment judge. At that hearing one agency witness dared to attend to testify in my favor; and I received unemployment, BEFORE and in spite of TACOM refusing to admit it had made any decision to remove me! The unemployment decision was based on TACOM's refusal to pay me–a refusal continuing since March 1980 to present.

s. TACOM later claims to have separated, terminated, or removed me (its terms vary, contrary to case law, e.g., *Jones* v *J. J. Security*, 767 F Supp 151, 152 (ED Mich, 1991)).

t. Some years later, TACOM changed position to declare me retroactively forced out on "retirement" on the pretext that I had applied to retire myself! whereas I refuse to do so. (Such an application by me would violate O.P.M. regulations, e.g., 5 C.F.R. § 831.1206(a)).

u. TACOM obstructs my obtaining Inspector General review on merits.

v. TACOM refuses me review on merits of my EEO claims in violation of 29 C.F.R. § 1614.

w. TACOM uses repeated falsifications and mail fraud to obstruct review, in violation of laws such as 18 USC §§ 1001, 1341, and 1961 et. seq.

x. When I pleaded with the local federal court (a judge personally engaged in the prohibited activities at issue) to direct review, TACOM objected to my being allowed review on merits (counseling, investigation, hearing) notwithstanding the EEOC orders directing TACOM to allow me review on merits. (Such EEOC orders are mandatory for others, *Moore* v *Devine*, 780 F.2d 1559, 1560 (CA 11, 1986); *Anthony* v *Bowen*, 270 U.S.App.D.C. 246, 250, 848 F.2d 1278, 1282 (1988); *Haskins* v *Dept of Army*, 808 F.2d 1192, 1199 (CA 6), *cert den.* 484 U.S. 815 (1987) – but in TACOM's view, not for a whistle blower).

y. TACOM opposed my efforts to obtain review on merits all the way through to the Supreme Court, at which the then Solicitor General, the notorious Kenneth Starr, took the TACOM 'no rights' for me position.

z. After being refused EEO review (a refusal EEOC verified), I then sought M.S.P.B. review. TACOM ex parte arranged for M.S.P.B. to falsify decision, copy the list of proposed actions that I and my supervisor had drawn up to bring TACOM in the direction of compliance. M.S.P.B. made false findings of fact, i.e., pretended that the listed actions TACOM refused to take, had been done by TACOM, and that I had refused them! In law, adjudicator duty is to "enforce constitutional liberties even when denied through spurious findings of fact," *Milk Wagon Drivers Union* v *Meadowmoor Dairies*, 312 U.S. 287, 299 (1941).

aa. When the aforesaid falsification was called to M.S.P.B. attention, TACOM ex parte arranged for M.S.P.B. to disregard its own words, words published in 6 MSPB 626; 7 MSPR 13.

bb. TACOM has subjected me to long term failure to comply with promulgated regulations.

(Rules "must go through a considerable vetting process before they take effect [hence, non-compliance] may be viewed as intentional discrimination." *Ass'n for Disabled Americans, Inc* v *Concorde Gaming Corp*, 158 F Supp 2d 1353, 1362 n 5 (SD Fla, 2001).

cc. TACOM has subjected me to long term refusal to abide by case law showing that an employee remains on the payroll until proper administrative steps for ouster are taken, e.g., *Hanifan* v *U.S.*, 173 Ct Cl 1053; 354 F2d 358, 364 (1965); and *Sullivan* v *Dept of Navy*, 720 F2d 1266, 1273-4 (Fed, 1983).

dd. TACOM has subjected me to actions outside the rule of law notwithstanding that 5 USC § 522(a)(1)(C)-(D) bans agencies from adversely affecting persons by actions outside the rule of (published) law. *Hotch* v *U.S.*, 212 F2d 280 (1954); *Bowen* v *City of New York*, 476 US 467 (1986).

4. Current Status of Review Requests: The Dept of Army refuses to allow my EEO review requests to be heard on merits, i.e., refuses to assign counselor, allow investigation, allow hearing. Re my most recent (August 2004) review request to the Dept of Defense Inspector General, same was promised review by February 2005. Nothing has been heard since, and in view of the notorious federal-wide pattern of hostility to whistle blowers, I expect that said effort to secure review in the Inspector General forum will likewise come to nought.

5. Suggested Remedial Actions:

Federal laws banning extortion, falsification, mail fraud, etc., while enforced for others, are never enforced by the "Department of Justice" when such crimes are directed against whistle blowers. It is D.O.J. policy to aid management in its crimes against whistle blowers, not to enforce the criminal laws impartially. Thus:

a. In order to protect the nation, prevent injuries, save lives, halt the money trail for terrorism, and for any and all other benefits of whistleblowing, the country must first protect the country's

employees. Thus *any* new law *must* be retroactive to 1978, the year of the so-called Civil Service Reform Act. Reason: ALL reform laws have been adjudicated full of loopholes. Each new law has caused new victims, as employees emboldened to blow the whistle have been declared by M.S.P.B., O.S.C., and Federal Circuit, as 'not covered.' Now we are gunshy, and fear whatever new law is passed, we'll be the one 'not covered.' That is a risk not worth taking. So any new law must be retroactive, must remedy (including restoring to duty) all those past victims of the 'not covered' decisions, lest the process of being 'not covered' recur indefinitely again and again, to the detriment of the public interest.

b. Grant the same right to whistle blowers as accused criminals, a 'public defender' office—an office assigned to represent whistle blowers automatically on request. That would be "equal protection under the law," the Constitution, as right now, ANY boss/manager, no matter how corrupt/liar, is automatically represented, at no charge, by his/her agency legal office all the way to the Supreme Court! Whistle blowers need equal rights, "equal protection of the law," automatic full representation, at no charge. [Note *Herzbrun v Milwaukee County*, 338 F Supp 736, 738 (ED Wis, 1972), "[T]he threat of being fired is equal to the threat of most minor and some not so minor criminal sanctions."]

c. Require mandatory STAY of pay cut-off until AFTER ALL review on merits is completed. [*Piccone v U.S.*, 186 Ct Cl 752; 407 F2d 866 (1969); *Family Independence Agency* v *Kucharski*, 468 Mich. 202; 661 NW2d 216; Lexis 939 (20 May 2003)]. The idea of being pay-less for years is an ultra-deterrent to whistle blowing, and costs lives as employees fear to blow the whistle, as cannot afford being pay-less for years.

d. Provide for mandatory jury trials in all whistle blower cases, as in the private sector.

e. Require the D.O.J. to do mandatory criminal prosecutions of management when issues

arise of extortion, falsification, mail fraud, embezzlement, death(s), and/or other crime(s) by same. [*Taylor v Meirick*, 712 F2d 1112, 1117 (CA 7, 1983) ("A tortfeasor has a duty to assist his victim. The initial injury creates a duty of aid and the breach of the duty is an independent tort. See Restatement (Second) of Torts, § 322, Comment c (1965)").]

Respectfully,

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Subsequent revisions:

Federal employers cannot lawfully claim to have had a basis for disciplining/removing an employee based on "approved leave." Punishing an employee for approved leave is an improper reason, *Bond* v *Vance [Army]*, 117 US App DC 203, 204; 327 F2d 901, 902 (1964); *Washington* v *Dept of Army*, 813 F2d 390, 394 (CA Fed, 1987). (Indeed, forced LWOP is prohibited by the agency's own regulation 600-5.14-27 and 28). Yet, after imposing the leave, TACOM then turned around and (by innuendo, no specifics have been provided in a notice), used said enforced leave as basis for ouster.

Pursuant to constitutional due process, *Cleveland Bd. of Ed. v Loudermill,* 470 U.S. 532 (1985), and federal law 5 USC § 7513, notice must precede ouster. Notice consists of, e.g., a "statement or citation of the written regulations . . . said to have been violated [&] detailed statement

of the facts," *Boilermakers v Hardeman*, 401 US 233, 245; 91 S Ct 609, 617; 28 L Ed 2d 10, 21 (1971). When no notice is provided, "jurisdiction" for the action is lacking, the action (here, ouster) is void, and cannot be ratified, as per the definition of "*void*," *Black's Law Dictionary* (6th ed, 1990), p 1573.

"*Quod ab initio non valet in tractu temporis non convalescet*." That which is bad in its commencement improves not by lapse of time. "*Quod initio non valet, tractu temporis non valet*." A thing void in the beginning does not become valid by lapse of time.—Black's Law Dictionary (St. Paul: West Pub, 5th ed, 1979), pp 1126-1127.

An employee remains on the rolls until the ouster is done correctly. See, e.g., *Siemering* v *Siemering*, 95 Wis 2d 111, 115; 288 NW2d 881, 883 (Wis App, 1980), the "condition precedent not having been met, the action was never commenced." Here, the "condition precedent" is notice. Absent same, the ouster "was never commenced." Just as a divorce does not go in effect unless/until done correctly, likewise an ouster does not go into effect unless/until done proper. The spouse remains married; the employee remains an employee. And: *New Orleans* v *Texas & P Ry Co*, 171 US 312; 18 S Ct 875, 883; 14 L Ed 178 (1898), "the obligation is suspended until" (the ouster effort "is suspended until" notice actually is issued, which it has not been as of now over 28 years later).

U.S. government attorney pattern of contempt for due process rights is clear, see, e.g., *NAACP v Levi*, 418 F Supp 1109, 1114-1117 (D DC, 1976) (not investigating before acting). Here, none of the various investigation standards or criteria were met: neither the seven point criteria of *Grief Bros Coop Corp*, 42 Lab Arb (BNA) 555 (1964) and *Combustion Engineering, Inc*, 42 Lab Arb (BNA) 806 (1964), nor the twelve point civil service criteria of *Douglas v Veterans Admin*, 5 MSPR 280, 305-306 (1981), nor the five point civil service criteria of *Yorkshire v MSPB*, 746 F2d 1454, 1456 (CA Fed, 1984).