No. 20-204

IN THE SUPREME COURT OF THE UNITED STATES

MING WEI,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA, et al.,

Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

(1) Whether It is unconstitutional to use a case in deciding a different issue, forbidding reopening, and disallowing interpreter to preclude the new issues?

Wei is a naturized Asian American dismissed by PADOH. PADOH had about 50 staffers to collect, convert and correct the HIV data, Wei's duty was to check their accuracy and completeness. After Wei reported the discrimination and many errors in the converted HARS data, PADOH deterred Wei by increasing his workload, blocking his access the database and forbiting his pay leave and dismissed him. The Commission disallowed Wei to have an interpreter in its hearing. PADOH insists the dismissal cause was Wei failed to convert HARS data solely. A state court affirmed. PADOH has admitted that it assigned others rather than Wei to convert HARS data in this case, but the Defendants insist the Commission case couldn't be reopened. However, they falsified that the state tribunals decided something else rather than converting the HARS data. It misled the lower courts to preclude Wei's major claims.

(2) Whether it is unconstitutional that the Defendants used the false statements to hurt Wei but claimed the government employees' immunity?

The Defendants repeatedly claimed that they did the government's duty in response to that Wei accused them making the false statements, defamation, and fraud. These false statements misled the lower courts.

(3) Whether it is unconstitutional to define that an employee continued to complain the discrimination as the evidence of "no deter" and "no retaliation"?

The lower courts erred in using that Wei continued to make his complaints as an evidence of that Defendants didn't deter and retaliate against Wei.

PARTIES TO THE PROCEEDING

Petitioner (Plaintiff) is Ming Wei.

Respondents (Defendants) are the Commonwealth of Pennsylvania and its two agencies: the Pennsylvania Department of Health("PADOH") and Pennsylvania State Civil Service Commission ("Commission"); and its employees: Veronica Urdaneta ("Urdaneta"), in her individual and official capacity; Stephen Ostroff ("Ostroff") in his individual and official capacity; Tiffany Burnhauser ("Burnhauser") in her individual and official capacity; Godwin Obiri ("Obiri") in his individual and official capacity; Robert Giallo ("Giallo") in his individual and official capacity; Kim Strizzi ("Strizzi") in her individual and official capacity; John Does 1-5 in their individual capacities

RELATED PROCEEDINGS

The Supreme Court of the United States

Wei v. State Civil Service Commission No. 19-1373

The Commonwealth Court of Pennsylvania

Wei v. State Civil Service Commission, 961 A.2d 254 (Pa. Commw. Ct. 2008)

Wei v. State Civil Service Commission No. 263 C.D. 2015). (Pa. Cmwlth, 2016)

Wei v. State Civil Service Commission. No. 1902 C.D. 2016 (Pa. Cmwlth, 2017)

Wei v. State Civil Service Commission, No 1321 CD 2018 (Pa. Cmwlth, 2019)

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JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought to be the decision of the United States Court of Appeals for the Third Circuit for *Wei v. Commonwealth of Pennsylvania et al*, No. 19-1715 (3rd Cir, 2020) (Appendix B).

Special notice is while PADOH insists that the removal cause was Wei's failing to convert the HARS data in the state court, it falsified that the state court's decision wasn't for converting the HARS data to the federal court.

JURISDICTION

The Third Circuit denied Wei's petition for rehearing on March 31, 2020 (Appendix A), the jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The first amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

The fourteenth amendment provides "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Statement of the Case

The petitioner Ming Wei ("Wei") is a naturalized Asian American of Chinese origin with a pulmonary lobectomy (now at age 62) and worked in the PADOH from Feb 2001 until August 2007. He worked on the HIV team as an epidemiologist and data manager at PADOH headquarter in Harrisburg, Pennsylvania. A part of facts has been presented in the case No. 19-1373.

During his employment, the Defendants subjected him to a hostile work environment. PADOH had a double standard and stereotypical view that Wei should work harder than others, and other staff mocked Wei's national origin. PADOH retaliated against Wei after he described the instances of discrimination in connection with a complaint filed by an Asian American who later left the HIV team; then Wei became the lone Asian American in the team. Wei was told that if he complained more, he would receive more work. He was told that he was different from other staff members who were not Asian American.

PADOH denied Wei annual leave and using paid leave in lieu of FMLA leave, suspended his access to the PA-NEDSS that he needed to complete his work, overloaded him with work, and denied him training opportunity. In comparison, other staffers could enjoy those leave rights, access PA-NEDSS, get the paying training. PADOH even loaded their

unfurnishing 2005 lab reports to Wei to do, and loaded their cleaning work to Wei to do. PADOH disciplined Wei unreasonably, PADOH admitted no other staff was disciplined for missing a meeting but Wei though his supervisor never notified him to attend the meeting. Other staffers didn't complete their converting HIV lab data for a few years but PADOH ordered Wei set aside 2 hours daily to complete them within a few weeks. The PADOH told Wei that, if others could do his job, it would terminate him. The Defendants suspended Wei and then terminated his employment without just cause. In this regard, they concealed documents from him and they falsified the reasons for his termination. They also failed to return all of his personal belongings to him after he was terminated.

The major task of the whole HIV team which had 15 positions in 2007, together with the Bureau of Information Technology ("BIT"), was cleaning and converting HIV reports, deduplicating them into the potential cases (pre-HARS cases) to the field offices; then 16 field offices investigated them and sent the confirmed cases back to HIV team; Then Wei received Deloitte's (BIT's contractor) extracts of the confirmed cases, reviewing the completeness and accuracy of data in PA-NEDSS. He wasn't allowed to collect and correct the cases by himself. "his job is to analyze the data and point out errors he finds". HIV team or BIT, cooperated with the field offices in it was necessary, should fix the inaccuracies and incompleteness.

In April 2004, PADOH decided to use BIT's PA-NEDSS replacing CDC HARS as the active

database for Pennsylvania HIV/AIDS cases. In the initial Charter: BIT should convert all existing HIV reports and future HIV lab reports timely and convert about 44,000 HARS cases into PA-NEDSS by July 1, 2005. PADOH invested multi-million dollars for BIT to complete them. Unfortunately, BIT didn't complete either tasks on time.

On Oct. 28, 2005, PADOH stopped all other HIV functions to concentrate converting both the backlog HIV lab reports and HARS data in 2 months. it assigned other staffers to clearing and converting 2005 reports by Dec 19, 2005. It also assigned Wei spending 2 months exclusively to clean 16 HARS databases from the field offices because cleaning is a precondition for conversion.

Up Wei completed cleaning, he returned to check the completeness and accuracy of the cases weekly; Wei identified many errors in the converted HARS data, thereby saving the Commonwealth millions of dollars in funding. Still he was harassed by revoking the password to access PA-NEDSS. However, he still worked extremely hard to push the PADOH to fix the errors.

Wei wrote to Obiri that he didn't see any 2005 reports in PA-NEDSS yet on Dec 22, 2005. He indicated the incompleteness in processing HIV reports to BIT's lab report manager Giallo and Obiri several times. BIT was responsible to upgrade its 2005 HIV lab format to convert those reports.

Giallo responded that they fell behind in processing both 2005 and 2006 reports. And he,

discussed with Obiri, was drafting an updated Charter for the 2005 reports [since Dec 2005] but "the project was bigger than originally anticipated, it required a complete PA-NEDSS team effort for the project". Because the methods of reporting were different, about 600,000 raw records reported in 2005 are about 14 times more than about 40,000 raw records reported in 2006.

Finally, PADOH held a Dec. 2006 BIT meeting to accept the updated Charter, it wanted HIV team got an estimated number based on an upcoming BIT draft format first, the next step was holding a meeting to decide the variables of the formal format. Based on the experiences of that PA-NEDSS team converted up to 330,000 reports yearly. The work was expected to complete in the end of 2008.

Although PADOH claimed others were in charge of cleaning, no one cleaned the reports for the draft format when it arrived. Wei worked days and nights, cleaned, converted and de-duplicated and got 158 potential cases (about 8% total cases) for estimate. Then Giallo updated the draft format for "more detail" and required to do deeper, Wei redid and resent.

However, Giallo changed his tone, blamed that Wei did too deep. they defined the draft format was for an estimated number only, it was still useless for the formal conversion. Urdaneta 100% agreed with him.

Wei gave his estimated number to be about 2,000 real potential cases to Urdaneta and Giallo in March 2007. They didn't give Wei the feedback but Urdaneta blamed Wei of missing a morning

meeting with the alibi of her un-exist email to ask his attending.

Wei reported the discrimination and defamation to the Division of Equal Employment Office ("DEEO"). He contacted DEEO previously, while PADOH defined the data management as having "severe staffing shortfalls" when 2.75 staffers worked for the function, it expanded the staff members in other functions from 5.25 to 14, but cut the staff members in the data management into only one in 2007. Wei needed to use his spare time to complete his routine work. Wei reported that PADOH decided Wei couldn't get the compensatory time for the task since Nov 2006. In contrast, Urdaneta and other staffers still received their compensatory time.

However, in April 2007, Urdaneta gave Wei a reprimand for the meeting and ordered Wei to use the 2007 BIT draft format to convert all 2005 HIV lab data. Because of huge workload, Wei asked PADOH arranging others doing their jobs and giving him an assistant, it rejected both requests but ordered him to extract 2 hours daily to do the "extra work".

Therefore, Wei did others' cleaning job first, he worked extremely hard and got sick and hearing problem. The excessive work and groundless harassment by the Defendants caused Wei severe ill. Wei became depressed and his health began to deteriorate. His medical providers advised him to work only intermittently in FMLA.

By July 2007, Wei completed about 400,000 reports, but he was very ill. Aware that the Wei's

illness could be exacerbated thereby, the PADOH harassed and abused him. It denied him annual leave even though he had accumulated 100 hours of vacation time. It also disallowed Wei using his pay leave in lieu of FMLA leaves.

On July 23, 2007, Wei filed a complaint with the Pennsylvania Human Relations Commission and the EEOC. By the time that PADOH suspended Wei to investigate on August 24, 2007, Wei did his "extra work" exceptionally by processing 550,000 reports; and did his routine excellently, PADOH admitted that Wei correctly identified the data errors. However, PADOH fired him on September 4, 2007.

The Commission oversees hiring, promotions, and holds a hearing to decide the appeal from the government employees for the discipline with a status of limitation of 20 days (101a). On Dec. 3, 2007, the Commission held a hearing after Wei appeared.

Pennsylvania law requires the provision of interpreters for proceedings before administrative agencies for the persons with limited English proficiency. Wei requested to allow an interpreter for the hearing, but the Commission denied his request. Thus, he couldn't fully address his issues in the hearing.

Wei subpoenaed PADOH's key documents such as its updated Charter. PADOH refused releasing the documents. It didn't start returning Wei's belongings in PADOH's office that contained some key documents until June 2009 but never returned his notebooks. Many key documents that Wei filed

to reopen couldn't be presented in the hearing.

PADOH insists "the uncompleting assignment from Dr. Urdaneta and which resulted in his discharge was not given to him until December of 2006 [BIT meeting]". "In December 2006, Veronica Urdaneta, Wei's supervisor, assigned Wei the task of converting the [HARS] data files" "The task was solely Wei's responsibility" *Wei v. State Civil Service Commission,* 961 A.2d 254 (Pa. Commw. Ct. 2008 *Wei I.* But "Wei claims that it was not his responsibility to convert the 2005 [HARS] data files" *Wei I.*

The Commonwealth of Pennsylvania requires the agencies to document their business records, and preserve the records for the anticipating litigation. However, during hearing, PADOH didn't present the key records relevant to the just cause, but used the oral testimony to make up the facts. Wei claimed PADOH's employees lied under oath.

The Commission decided that since PADOH provided Wei sufficient time and tasked him converting HARS data solely, the incompleteness of HARS data constitutes his "insubordination and unsatisfied work performance" ("IUWP").

Wei appeared the Commission's decision to the Commonwealth Court of Pennsylvania, Wei claimed that PADOH never assigned him to convert HARS data. PADOH insisted that it assigned Wei, and only Wei, to convert HARS data. The Commonwealth court noticed that both sides were different in every key fact, but it affirmed.

In May of 2009, Wei went to the Commission

office to discuss his case and get the job opening information. When he asked to review his file, he was told to come back another day. When he went back, the Commission called the police to stop, and arrest Wei. Although the Commonwealth finally withdraw the case. the Defendants defamed Wei that the case was ended with plea bargain.

Defendants embarked on a campaign to defame Wei and to destroy his career and reputation. They distributed that Wei engaged in IUWP in failing to convert HARS data to block Wei's employment opportunity. Because Defendants' defamation, Wei tolerated hard torture in mind, without weekends and holidays, and was always on the nightmare.

Procedural History of This Case

Wei commenced this action by filing a complaint in April, 2011. Wei made multiple claims against the Commonwealth, its agencies PADOH and the Commission, and its employees: Urdaneta, Ostroff, Burnhauser, Obiri, Giallo, Strizzi and John Does 1-5 for defamation, discrimination and retaliation based on race, national origin and disability. As relief, Wei seeks compensatory and punitive damages as well as reinstatement.

The Defendants filed their dismissed motions; their motions were partially granted but largely denied. Then the Defendants filed their motion for Summary Judgment with the doctrine of collateral estoppel as the major weapon, and Wei filed his motion for partial summary judgment on defamation only, the District Court denied Wei's

motion, granted Defendant's motion partially and denied it partially, but it allowed the Defendants to file their second motion (Appendix E). Then the District Court in March 2017 granted Defendants' second motion partially, even accepting the Defendants' claims of the Commission's findings to preclude Wei's claims, the District Court found that four counts of Wei's claims still could go to a trial (Appendix D). However, in June, 2018, the District Court changed mind and asked the Defendants to file another motion to object R&R. In March 2019, the District Court accepted the Defendants' motion for Summary Judgment fully (Appendix C). Then Wei appealed to the Third Circuit, Defendants passed the due dates to enter Appearance Form and file their response brief. The Third Circuit affirmed (Appendix B).

REASONS FOR GRANTING THE PETITION

I. The Third Circuit erred in affirming the issue preclusion. It is unconstitutional to use a case in deciding a different issue, forbidding reopening, and disallowing interpreter to preclude the new issues

The requirements of issue preclusion have been satisfied if: (1) the issue is identical; (2) the judgment was final and on the merits; and (3) there was a full and fair opportunity to litigate. See *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1073 (3d Cir. 1990). A party asserting issue preclusion bears the burden of proving each of these elements. *Taylor v. Sturgell, 553 U.S. 880,*

128 S. Ct. 2161 (2008). Wei indicated that the Defendants failed to meet its burden to prove (1) or (3). Wei also indicated that changes in the controlling facts which render issue preclusion inapplicable *Montana v. United States,* 440 U. S. 147, 153 (1979).

(a) Erred in the issue is identical

The Third Circuit erred in agreement with the Defendants' fraudulent statement that the state court affirmed a just cause for Wei's removal from his job due to [IUWP] other than failing to convert HARS data.

However, As the Third Circuit wrote "In 2008, the Commission decided that [PADOH] had the just cause for the firing because Wei had failed to complete an assignment" (Appendix B, 4a). The assignment was converting HARS data in both the Commission's decision and the Commonwealth Court's affirmation. The Commonwealth Court agreed with PADOH's claim: because Wei failed to convert HARS data solely, this constituted the IUWP. *Wei I.*

According to the Pennsylvania law, a civil servant hasn't been given adequate notice of the reasons for dismissal if the only reason given is "continued unsatisfactory work performance." *Wood v. Department of Public Welfare,* 411 A.2d 281 (Pa. Cmwlth. 1980).

The just cause that PADOH gave was "In December 2006, [Urdaneta], Wei's supervisor, assigned Wei the task of converting the [HARS

data]" *Wei I.* "Wei was terminated for not completing the [HARS data] assignment by July 31, 2007. While the Department maintains that Wei was given ample resources and time within which to complete the assignment" but "Wei claims that it was not his responsibility to convert the 2005 [HARS data] files" *Wei I.*

"In a letter dated September 4, 2007, [PADOH] notified Wei that he was being removed from his position because of [IUWP]. Specifically, [PADOH] maintained that Wei 'failed to complete the 2005 backlog data work assignment as directed by July 31, 2007.'" *Wei I.* PADOH later clarified that the assignment was converting HARS data (84a).

In the state proceedings, the Defendants claimed that the incompleteness of converting HARS data constituted Wei's IUWP. Since the Defendants have admitted that PADOH never assigned Wei to convert the HARS data, his IUWP must never exist.

PADOH insists that the incomplete converting HARS data by Wei was well established in the state case, and it had stronger reason than incompleteness to fire Wei if Wei did the unassigned HARS task by himself. See *Wei v. State Civil Service Commission. No. 1902 C.D. 2016 (Pa. Cmwlth, 2017)* (*Wei III*) Based on the Defendants' just cause in the state case, Wei must be dismissed because he didn't complete converting HARS data. Based on the Defendants' facts in this case, Wei must be fired if he converted HARS data. Evidently, the issue decided by the Commonwealth Court and the issue in the federal court are not

identical because banning the conversion of HARS data and ordering to convert HARS data are not only unidentical but also totally contradictory.

Clearly, the Defendants didn't meet their burden to prove the issue of that they tasked Wei converting HARS data in the state tribunals is identical to the issue based on that they never assigned Wei to convert HARS data in this case.

While PADOH admitted that it assigned BIT and others rather than Wei to convert HARS data, it claimed that it assigned Wei to unify HIV lab data into the BIT CSV format so they could be "uploaded into PA-NEDSS with the rest of HARS data" but Wei failed (case19-1373, 151a-152a[1]). This is fraud too, because PADOH in 2007 banned electronically converting any HARS data though the incompleteness and inaccuracies of previous conversions needed to fix. Wei addresses the issue in details in this filing later.

(b) Erred in Wei had Full and Fair Opportunity

In this case, the Defendants claimed that because the Commission provided Wei the same full and fair opportunity as the court, they could use its decision to preclude the federal court hearing, Unfortunately, the Third Circuit erred in agreeing the Defendants' argument. However, the facts

[1] In addition to cite the appendixes as "1a-104a", Wei also cited some documents with prefix "case19-1373" for Appendixes filed with the case 19-1373, "AX" for those filed to the Circuit Court and "DCD" for those filed to the District Court.

show that Wei hadn't full and fair opportunity:

(1) Barred to reopen the Commission case

In the state case, PADOH insists that the Commission isn't a court, so the Commission's case was disallowed to be reopened as the court does. [So, its full and fair opportunity is less than the court]. In this case, however, PADOH and the Commission claimed that they could use the Commission's decision to preclude the federal court hearing because the Commission has provided Wei full and fair opportunity as the court.

The Court held the judicially created doctrine of collateral estoppel doesn't apply when the party against whom the earlier decision is asserted didn't have a "full and fair opportunity" to litigate the claim. See *Montana; Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U. S. 313, 328-329 (1971). Indeed, "offer a full and fair opportunity to litigate the merits, and thus are sufficient under the Due Process Clause of the Fourteenth Amendment" was a prerequisite for the issue preclusion *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 478 (1982).

If the Commission case couldn't be reopened when a fraud was committed, the decision must be banned to preclude later court hearing because the applicant didn't have full and fair opportunity in reopening as that in the court case.

There is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter *Hazel-Atlas Glass Co.*

v. Hartford-Empire Co., 322 U.S. 238, 246 (1944). *NC-DSH, INC. v. Garner* 218 P.3d 853 (2009). The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits *Lockwood v. Bowles*, 46 F.R.D. 625, 634 (D.D.C. 1969). In Pennsylvania, the Court must not tolerate the fraud "where a judgment has been obligated by fraud, no court will permit its records and processes to be the instruments of infamy." *Sallada v. Mock*, 121 A.2d 54, 55 (Pa. 1923).

(2) Disallowing an interpreter

Wei was denied an interpreter during the Commission hearing though he requested one (case19-1373, 136a) and he had the limited competency of English. Commonwealth has documented "Wei is Asian and his English is very broken" (AX250) and the District Court required Wei to hire an interpreter when he wanted to deposit the Defendants.

In the state case, PADOH insists that the Commission isn't a court, its hearing didn't require the same standard of the interpreter as the court, the Commission could disallow Wei to have an interpreter *Wei I.* [So, its full and fair opportunity is less than the court]. In this case, however, they claimed that because the Commission provided Wei the same full and fair opportunity as the court, they could use its decision to preclude the federal court hearing, Unfortunately, the Third Circuit erred in agreement with the preclusion.

Furthermore, depriving Wei's right to be heard undermined the integrity of the American legal system, Asian Americans should be treated equally. In addition, millions of Americans work oversea and many of them mayn't be fluent in the native language. They would get the unfair trial when the countries that they reside denied their request for the interpreter.

Wei also was denied the opportunity to correct the hearing records. Misled by the Defendants, the Third Circuit misunderstood that Wei wanted to make the correction twice, as Wei wrote in the petition of rehearing (Appendix G), Wei actually wanted to correct his own testimony located as the second part of the transcript (Wei testified after PADOH finished testifying).

Therefore, Wei's meanings weren't documented correctly. it violated Wei's free speech right to express what he wanted under U. S. Constitution's first amendment and prejudiced Wei. Although the Commission discredit Wei and rarely cited what Wei testified. But the Commission claimed Wei agreed that all documents would be concluded by the end of the hearing day, it struck Wei's additional evidence (case19-1373, 150a) for impeaching and rehearing. However, Wei's understanding and agreeing was that the day's testimony in the Commission hearing was concluded. In addition, Wei has been deprived from citing what he really testified in the appeal or other cases.

(3). Suppressing the key evidence

As Wei stated in the petition for rehearing (Appendix G), PADOH suppressed the key evidence in the state proceeding.

PADOH rejected Wei's request (AX419), for the updated Charter, in which PADOH required that BIT developed the format first, then HIV team converted the "raw" reports into the [formal] format (case19-1373, 72a). It means converting HIV reports into the draft format was banned and useless, Giallo and Urdaneta also wrote so in March 2007 (case19-1373, 91a). Therefore, that Urdaneta in April 2007 ordered Wei to convert 600,000 records into the BIT 2007 draft format was totally for the retaliation and harassment.

PADOH in the updated Charter required "If there is not enough information to meet the PA-NEDSS required fields [of BIT format], the data should not be converted" (case19-1373, 74a, para. 1). It consists with PADOH routine that the cleaning up must be done before the conversion. Because others were in charge of cleaning but they didn't clean, it should terminate them rather than Wei.

PADOH also suppressed the evidence that it received Wei's Aug 27, 2007 report of converting 550,000 reports (case19-1373,119a). It testified that Wei didn't send the email, then it decided terminating Wei (case19-1373, 137a:16-25). therefore, the outcome must be reversed based on the newly confirmed fact.

PADOH falsified it tasked converting HARS data to Wei in Dec. 2006 BIT meeting. However,

the Defendants have admitted that the task was an estimated number (case19-1373, 91a), and they received Wei's estimated number of 2,000 potential cases (case19-1373, 97a). Therefore, Wei completed the task of Dec. 2006 BIT meeting.

The Defendants in their material facts didn't dispute that Wei didn't know many facts until the discovery of this case (case19-1373, 155a). "If significant new evidence has been uncovered since the parole revocation hearing, [the court] cannot find that Hernandez had a full and fair opportunity to present his case at the hearing without that evidence" *Hernandez v. Wells*, 2003 WL 22771982, *5 (S.D.N.Y. 2003).

(c) Erred in the control facts wasn't changed

The Third Circuit erred in agreeing the Defendants' argument "Wei also argues that an exception to preclusion applies: that there have been changes in the controlling facts which render issue preclusion inapplicable. However, he simply repeats his previous argument that he was not assigned to convert the HARS data".

However, as the Third Circuit recognized: "the firing because Wei had failed to complete an assignment" (4a). In the state case, both PADOH claimed (84a) and the state tribunal decided that the incomplete assignment was converting HARS data *Wei I.* Since the Defendants admitted that PADOH never assigned Wei to convert HARS data in this case (case19-1373, 151a), the control facts have been completely changed. However, Wei has

provided many other key changes in the facts.

For example, in the state case, PADOH claimed that it provided Wei several weeks of sufficient times to complete converting HARS data, but Wei failed to complete the task, this constituted IUWP and deserved to be terminated. So, the termination had nothing related to the discrimination and retaliation. In this case, the Defendants admitted converting HARS data was a huge project, it assigned BIT and many other staffers to do the work since 2004. Indeed, PADOH's documents show that it assigned Wei to check the errors after the others converted HARS data (case19-1373, 51a, 54a, 55a). Therefore, the discrimination and retaliation emerge as the probable cause.

In the state case, PADOH claimed "Wei was charged with collecting and reporting HIV/AIDS data accurately" *Wei I.* In this case, its documents show Wei was charged with reviewing the completeness and accuracy of the collected data while about 50 staffers from the HIV team, BIT and 16 field offices were charged with collecting and correct the data completely and accurately (case19-1373, 50a-51a, 54a-55a).

In the state case, PADOH stated that Wei didn't send the email about his performance by Aug 29, 2007, then it decided to dismiss him (case19-1373, 137a:16-25). In this case, its documents show that it forwarded Wei's Aug 27, 2007 email about his performance (case19-1373, 119a).

In the state case, PADOH claimed "Urdaneta transferred some of Wei's job responsibilities to other staff members" *Wei I.* In this case, no her

email transferring Wei's duty to others was found. Instead, she emailed to assign more tasks to Wei (AX343-9) and Wei completed all of them. For example, Wei trained Obiri three times until Aug. 2007 (DCD 207-4, pp63-67).

In the state tribunals, PADOH claimed "the employer could not continue to wait for [Wei] to make excuse and to stall the progress of the project", so it terminated Wei to accelerate the progress (case19-1373, 138a). In this case, however, PADOH has admitted that it didn't complete its priority of 2005 HIV reports by Sept. 2010 (74a); it had no record that the work was completed.

In this case, PADOH had the records that the HIV team or BIT processed up to 480,000 HIV reports or 330,000 reports yearly (case19-1373, 147a, 58a). PADOH also claimed that it destroyed all hardware of 2007 computers (case19-1373, 150a).

In the state case, Urdaneta testified that PADOH ordered Wei to show the data in PDC but he didn't do that. In this case, PADOH denied her story (case19-1373, 141a). Neither PADOH's PDC minute nor any records documented her story or PADOH's order. Instead, PADOH documented that Wei had completed 400,000 records (case19-1373, 112a).

In the state case, PADOH claimed when Wei sent Giallo 158 potential cases, "In a response, Giallo informed Wei that he was getting too deep into the process" to portray Wei's insubordination *Wei I.* In this case, the records show that Giallo

responded Wei with an updated draft format to ask Wei getting deeper and "more detail", "[The message constructions rules] must be carefully adhered to in order for messages to be interpreted correctly" (case19-1373, 156a); However, Giallo changed the tone after Wei redid deeper.

In the state case, PADOH claimed that Wei could bring the data out of HIV secured area freely. In this case, based on Pennsylvania law and CDC HIV guidelines, HIV policy and requests must be in writing, and the papers with identities couldn't be brought out of the HIV secured area (case19-1373, 153a-154a).

In the state case, PADOH claims that e-mails show that Wei was insubordinate in refusing for six months to accept the duty of converting HARS data. In this case, neither email nor record show Wei refused to do so.

In the state case, PADOH has insisted that "the uncomplete assignment which resulted in Wei's discharge was not assigned to him until Dec. 2006 [Meeting with BIT] (DCD 343-1, p3)". In this case, it admitted the Dec 2006 task was an estimated number and it archived "Estimate gave by Dr. Wei" with the estimated 2,000 cases (case19-1373, 83a, 97a).

In the state case, PADOH insists it assigned Wei converting HARS data solely even in 2019 (84a) and the Commonwealth Court still disbelieves that PADOH never assigned Wei to convert HARS data. *Wei III.* In this case, Defendants claimed they never assigned Wei to convert HARS data but to unify 2005 lab data (case19-1373, 151a-152a), they

also assigned Allen and Lehman continued the task since 2006 (93a:5-6).

The Court held "The doctrines of collateral estoppel and res judicata, however, apply only in cases where controlling facts and law remain unchanged" *Commissioner v. Sunnen* 333 U.S. 591, 599-600, 68 S.Ct. 715, 92 L.Ed. 898 (1948). A party "need only point to one material differentiating fact that would alter the *legal inquiry" CSX Transp., Inc. v. Bhd. of Maint. of Way Emps.,* 327 F.3d 1309, 1317 (11th Cir. 2003)."

In addition, under the status of limitations of 20 days and the initial plan of 2-hour hearing (AX431), the Commission case limited to hear termination only though other events might be mentioned, but they were not planned to litigate there. It is inappropriate to use them to preclude.

II。 It is unconstitutional that Defendants used the false statements to hurt Wei but claimed the government employees' immunity. The Third Circuit erred in affirming the district court's decision to deny Wei's relevant claims and sanction motions.

Regarding Defendants' false statements, they argued the statements were related to their employment and were within the scope of their duties. For example, for Wei's defamation claims, the Defendants didn't dispute the facts but claimed that they enjoyed the immunity.

However, this Court in *Wood v. Strickland,* 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975) defined the scope of immunity available to officials

of the executive branch, the common law immunity of public officials had been limited to "good-faith, nonmalicious action taken to fulfill their official duties". So, the immunity certainly didn't include the intentionally false statements that the Defendants committed in this case. As Discussed above, the Defendants made the false statements to construct the just cause to dismiss Wei. In addition to those false statements, Defendants also committed the new ones in the federal court proceedings.

It was established law that a Government employees' fabricating evidence was a violation of due process. See *Fields v. Wharrie.*, 740 F.3d 1107 (7th Cir. 2014), *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Pyle v. Kansas*, 42, 317 U.S. 213, 215–16 (1942).

However, the Defendants used the false statements to win this case. For example, the Defendants stated that the Commonwealth Court affirmed the just cause for Wei's removal due to IUWP rather than failing to convert HARS data. In fact, the Commonwealth Court affirmed that falling to convert HARS data constituted IUWP. *Wei I.* PADOH has insisted so in the state case (84a).

Another example: Strizzi in 2012 wrote, under oath, that PADOH in an Aug 24, 2007 PDC reviewed the termination charge to Wei (89a, ¶4). However, she committed perjury because she never presented to the PDC as she admitted (91a; case19-1373, 131a).

In addition, PADOH documented that it orally suspended Wei to investigate his performance after [Dr U] Urdaneta accused Wei of failing to complete the task decided in the 2006 BIT meeting, no termination notice was recorded (case19-1373, 131a- 133a), Strizzi in her Aug 27, 2007 letter to Wei's home wrote "This is written confirmation of your suspension pending investigation...You will be notified of any action taken" (case19-1373, 144a), Clearly, the termination wasn't notified Wei by that time. Strizzi made a false statement in here.

In the state case, PADOH has insisted "the uncompleting assignment from Dr. Urdaneta and which resulted in his discharge was not given to [Wei] until December of 2006 [BIT meeting]" (DCD 343-1, p3). Since PADOH archived and admitted that the task to be an estimate only and Wei have given the estimate, it obviously would loss the case.

To win the case, PADOH used Obiri's false statements to this case that Wei must continue converting 2005 lab reports since fall 2005. However, PADOH's records show both Obiri and his supervisor Urdaneta in writing to move Wei to other "extra work" of cleaning the HARS databases of 16 field offices a month later (DCD 139-1, pp7-9). PADOH had no record to order Wei converting the lab data from Oct 28, 2005 to April 8, 2007. Instead, it had the record to order Wei reviewing the completeness after others converted them into PA-NEDSS (case19-1373, 51a).

U.S. Code § 1623 held Perjury is committed when "the defendant under oath has knowingly

made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false" *United States v. Dunn,* 577 F.2d 119 (10th Cir. 1978). The Defendants' contradictory statements must be considered as the perjury, it at least should be considered as the fraud in the Civil lawsuit.

In addition, putting those Obiri's under-oath statements together, we could find they contradicted each other in key issues. First, we could extract three key facts from them:

Obiri confirmed that he assigned converting 2005 lab reports as Wei's "extra work" in fall 2005 (93a:24) based on Wei's knowledge [rather than responsibility]. He also assigned Allen and Lehman to convert 2005 lab reports (89a, ¶5).

Obiri stated, from Oct to Dec 2005, the whole HIV team and Deloitte (BIT) concentrated on both converting 2005 HIV lab data by Dec 19, 2005 (90a, ¶6) and converting HARS data later. However, by Nov 22, 2005, they realized the deadline of completing the lab data was unrealistic (DCD 70-1, p7). So, the task was incomplete.

Obiri stated that he [on Oct 28 2005] moved Wei to "clean up the main [HARS] databases [of 16 field offices] for conversion" (94a:2-3) exclusively and "solely" (90a, ¶7) "in November and December 2005" (96a, ¶9). Since PADOH started converting HARS data in April 2004 (AX220), the data couldn't be converted because of uncleaning yet. Since other staffers didn't join Wei to clean up the

HARS data, they must continue converting HIV lab reports.

Obiri defamed Wei in several aspects: First, Obiri stated "When Dr. Wei failed to complete his assignment [of converting 2005 reports], PADOH failed to meet the Dec 19, 2005 deadline" to bring them into PA-NEDSS (90a, ¶6). However, he testified that he assigned Wei this "extra work" in fall, 2005 (93a:24) but banned Wei doing the work in Nov and Dec 2005 though he used a word "postpone" (96a ¶9). Clearly Obiri made the false statement.

Second, Obiri listed many emails (98a-99a, ¶3 &¶4) that he allegedly directed Wei developing a CSV format to convert 2005 lab reports. So. Wei must use his format to complete 2005 reports later. However, under questions, Defendants couldn't identify any email [or record] for this purpose (See 92a). The list was false. Indeed, Wei was impossible to develop any format for PA-NEDSS because he couldn't fully access PA-BEDSS and didn't know what PA- NEDSS required.

Furthermore, PADOH's Oct 2005 documented that Obiri favored using HARS format for the conversion (case19-1373, 145a), but opposed using CSV format (AX521-2). Moreover, in the updated charter developed since Dec 2005 (case19-1373, 70a) with Obiri (case19-1373, 78a), PADOH clearly required to convert the "raw" reports into the upcoming BIT format (case19-1373, 72a). It means to ban converting the raw reports into any other formats.

Third, Obirie claimed that he assigned Wei to convert 2005 lab data solely. Nevertheless, this contradicts his statements of assigning 3 staffers, others worked to Nov 22 [without Wei]; and he asked Allen and Lehman return to the 2005 lab reports in 2006 (94a:5-6).

Obiri also wrote "Once the conversion of the [HARS] data systems were complete, I instructed Ming Wei to return to "convert the 2005 lab reports. However, the Defendants have admitted that no record to instruct Wei to convert the lab data in 2006 (99a ¶5). Instead, PADOH ordered Wei to review the completeness and accuracy in PA-NEDSS (case19-1373, 51a) after others converted HIV lab data.

Obiri stated that he ordered Wei to postpone 2005 lab data for 2 months only. No record supports his claim. Indeed, some records didn't support his claim: Obiri in Oct 2005 wrote to Urdaneta and told Wei that Allen and Lehman could complete the lab data without Wei in 2 or 3 weeks (AX534, AX248), and he also stated that he didn't realize the deadline of Dec 19 was unrealistic until Nov 22, 2005 (DCD 70, p7).

While PADOH has admitted that it assigned the BIT and other staffers rather than Wei to convert HARS data in this case, it changed its story to "Wei failed to complete the assignment given to him of [converting] into a single format file the backlog of HIV laboratory data so that it could be evaluated, cleaned, and uploaded into [PA-NEDSS] with the rest of the HARS data" (case19-1373, 151a).

However, PADOH routinely and in its updated Charter required cleaning the reports as perfect as possible must be done prior to the conversion. "If there is not enough information to meet the PA-NEDSS required fields [of BIT format], the data should not be converted" (case19-1373, 74a). Indeed, once the reports converted into BIT's draft format, it couldn't clean anymore.

PADOH claimed that the other staffers were in charge of cleaning up but they didn't clean the lab data yet. Although PADOH in April 2007 assigned Wei to "set aside 2 hours" daily to convert 2005 reports into BIT 2007 draft format (case19-1373, 107a), if Wei waited for their cleaning, he shouldn't convert any reports. Therefore, PADOH committed the new fraud.

Defendants also falsified that Urdaneta's April 9, 2007 order (102a) wasn't a new assignment but an old task. However, Urdaneta's task was "I'm directing you to complete the processing of HIV laboratory data backing using the template provided by Bob Giallo..." (102a). This was the first time that PADOH ordered using the BIT draft format (template) to convert. It is completely new. It is a shock U-turn new. Although BIT started working the format from 2005 to Feb 2007 (103a), both Urdaneta and Giallo wrote this format was a draft format for getting an estimated number only, but banned it for the overall conversion in their March 2007 email (case19-1373, 91a).

Since PADOH defined the draft format was useless for the conversion, and it require converting "raw" lab reports into BIT formal

format (case19-1373, 72a), PADOH asked Wei to convert 600,000 raw reports into a useless draft format was both wasting and harassing.

PADOH banned converting the HARS data into PA-NEDSS in 2007 though the incompletes of previous conversion needed to fix. So, PADOH committed the new fraud by stating the conversion with the HARS data to be uploaded into PA-NEDSS.

Nevertheless, Wei worked extremely hard and processed (cleaned and converted) 550,000 reports (case19-1373, 119a). Based on PADOH's records, the BIT or HIV team could process up to 330,000 or 480,000 records yearly (case19-1373, 58a, 147a). Clearly, the Defendants committed the new fraud by stating that they provide Wei the sufficient time to do this "extra work".

PADOH in July 2007 told Wei that he was no long a part but let the other parts to solve the backlog lab data issue (case19-1373, 111a), and he should focus on his job of checking errors. However, while Wei enhanced his working on checking the accuracy and completeness, he continuously processed HIV lab data to 550,000 reports until PADOH suspended Wei for investigation on Aug 24, 2007 (case19-1373, 133a).

The Defendants blamed Wei "The project never began because Ming Wei never completed the unification of the backlog data". However, the Defendants claimed they terminated Wei to accelerate completing this priority (case19-1373, 138a) too. But, many years after Wei left, they still blamed Wei for their failure in converting

2005 lab data. Therefore, this must be defined as the defamation.

Another example, when Wei went to the Commission to get the case and job information in 2009, the Commission falsely claimed Wei was trespass and the Commonwealth charged Wei. Although the Commonwealth withdrew the charge later, the Defendants defamed Wei to resolve the charge by the plea bargain (DCD. 207-4, pp 20-21). A company called Wei and stated that he was dishonor in his criminal history based on a website Truthfinder, then Wei asked Truthfinder why it spread the false information to hurt his reputation (DCD 416-2), Truthfinder stated its information from the Government.

Because of the space limit, no all of Defendants' defamation, fraud and contradiction is listed in here. For the reason, Wei's claims against these fraud and defamation must be allowed, and his motions to sanction the Defendants must be moved forward.

In addition to the new fraud, the Defendants argued the old false facts accredited by the Commission and the state court; therefore, they could reuse them as the undisputed material facts to preclude Wei's claims. Indeed, most of Wei's claims were precluded in this way.

For example, Defendants cited the false statement in (case19-1373, 137a:16-25) and stated "Wei never supplied Burnhauser with an email or any other evidence that any of the files had been entered or unified. Id. at 28:16-25)" in their material facts. Although they have released the

Aug 27, 2007 email that Burnhauser received from Wei (case19-1373, 119a).

Another example, though PADOH admitted that it documented that BIT or HIV team could complete up to 330,000 or 480,000 reports yearly (case19-1373, 58a, 147a,). Since 2007 draft format added some variables into 2005 format (103a) and had the same strict requirement (case19-1373, 156a), converting a raw report into 2007 draft format requires the similar workload as converting it into 2005 CSV format. Defendants clearly knew that Wei completed converting 550,000 reports into the BIT's 2007 draft format was an excellent job.

According to the Defendants' logic, if Defendants successfully falsified a man died in the Commission, they could continue to claim his death even the man actually is alive. However, this is in violation of the Pa. Code § 204. Rules 3.3.: (a) A lawyer shall not knowingly: (3) offer evidence that the lawyer knows to be false.

However, this Court held changes in controlling facts essential to a judgment render collateral estoppel inapplicable *Montana*. Even if the collateral estoppel is applicable, it just precludes the identical issue in the new lawsuit, it never gives a green light to reuse the knowing false statements to preclude the new claims. Based on the status of limitation of 20 days in the Commission of appeal Wei only appear the termination in the Commission (101a), many of claims that Wei filed in this case was expired and

didn't prepare to litigate in the Commission. These claims certainly should not be precluded.

The success of using a previous fraud to interfere with a justice couldn't serve as an alibi to continue using the fraud to the Court. In *Atlas Glass*, the defendants had used a false story to defend and prevailed previously, but the Court didn't state this fraud should continue because they were previously accredited by the courts, instead, but declared "[f]rom the beginning there has existed . . . a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry."

In *Kenner v. C.I.R.,* 387 F.2d 689 (7th Cir. 1968), when an officer of the Court including lawyers is found to have fraudulently presented facts to court so that the court is impaired in the impartial performance of its legal task, the act is considered as "fraud upon the court". The court held "a decision produced by fraud on the court is not in essence a decision at all and never becomes final."

While an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court." And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court. *Kupferman v. Consolidated Research & Manufacturing Corp* 459 F.2d 1072 (2d Cir. 1972).

Furthermore, when an officer of the court fails to correct a misrepresentation or retract the false evidence submitted to the court, it may also

constitute fraud on the court. *In re* McCarthy, 623 N.E.2d 473, 477 (Mass. 1993).

Even considering all the Commission's writings could be used to preclude, the District Court in 2017 still found Wei's 4 claims could move forward. The Defendants tried to use' the false statements to get rid of them. For example, because the Defendants claimed that Urdaneta wasn't aware of the decision to approve Wei's FMLA, then the District Judge used "no evidence that Dr. Urdaneta was aware that Wei had been approved for FMLA leave by human resources" as one of the reasons to dismiss Wei's claim (23a). However, the evidence shows that Urdaneta knew the decision (104a).

Rule 11 sanction doesn't require proving "Bad faith". See *Lieb v. Topstone Indus.*, 788 F.2d 151, 157 (3d Cir. 1986); because window period was provided, "subjective good faith no longer provides the safe harbor it once did." for rule 11 sanction. *Eastway Constr. Co. v. City of New York,* 762 F.2d 243, 253 (2d Cir. 1985). Since the Defendants didn't correct within 21 days, the sanction should be applied.

What Defendants have done to use the false statements to win the case is not the legal art but far cross the red line. This was especially true that making false statement is a very common criminal charge in the USA. Their prevails undermine the integrity of the functioning legal system.

The Court held "if the limitations period began to run regardless of whether a plaintiff had discovered any facts suggesting scienter. So long as a defendant concealed for two years that he made a

misstatement with an intent to deceive, the limitations period would expire before the plaintiff had actually "discover[ed]" the fraud." *Merck & Co., Inc. v. Reynolds et al.*, 130 S. Ct. 1784 (2010). In this case, Defendants have continued using their power and public authority status making the false statement to deceive the tribunals after Wei indicated they were false,

A Court could sanction the party's misconducts even the misconducts did not occur within this court. The power of the federal courts to sanction misconduct, be it vexatious litigation or contemptuous behavior, is beyond doubt. See, e.g.. *Roadway Express, Inc. v.. Piper*, 447 U.S. 752, 65 L. Ed. 2d 488, 100 S. Ct. 2455 (1980), *Afyeska Pipeline Serv. Co. v. Wilderness Society,* 421 U.S. 240, 44 L. Ed. 2d 141, 95 S. Ct.1612(1975); In addition to the goal of deterrence, the exercise of the inherent power can also be based on the goals of compensation and punishment.

In the initial complaint, Wei claimed that Defendants committed for intentional emotional distress but was dismissed by the District Court (Appendix F). Based on that the Defendants repeatedly and intentionally falsified the fact to harm Wei, and they have continuously caused Wei severe stress. Wei requests to add the claim against the Defendants.

III. It is unconstitutional to define that Wei continued to complain the discrimination as the evidence of "no deter" and "no retaliation". The

lower courts erred in siding with the Defendants' this claim

In the district court, the Chief Magistrate Judge decided that Defendants made some misstatements but didn't reach the sanction level. She pointed out that Defendants listed Wei's admission that he missed a mandatory meeting was a misstatement.

Wei actually stated this wasn't a mandatory meeting and he never received Urdaneta's order to go to the meeting. In addition, no word "mandatory" was presented in the notice of this meeting. In contrast, the notices of the real mandatory meetings from Urdaneta and others had the word "mandatory" (AX421-2) but some staffers still missed the meetings.

Soon after Wei reported DEEO that Urdaneta falsified that Wei missed a mandatory meeting, Urdaneta gave Wei a reprimand though PADOH admitted it never disciplined any employee for missing a meeting (AX536) and Urdaneta admitted that she missed some meetings.

Urdaneta also assigned Wei to complete processing 600,000 HIV reports into 2007 BIT draft format solely in a few weeks (2 hours daily), though PADOH documented that whole BIT or HIV team needed at least a year to complete them (case19-1373, 58a, 147a). PADOH also banned Wei to have the compensational hours in his overtime though others could get it.

Urdaneta wrote "Because of your deadline of your work assignment [of 2005 reports], I am not approving any annual and personal leave" and

preclude Wei's pay leave in lieu of FMLA. Then Wei complained that he must get the pay for his sick. However, PADOH on July 2, 2007 to issue a reprimand to deter Wei 's complaint (AX540) and insisted that Wei couldn't get any pay leave until he complete 2005 reports. This is a clearly retaliation: PADOH claimed that it ordered several other staffers to convert about 4,000 Philadelphia records in 2006, they converted 362 records only in 4 months (case19-1373, 64a); but they could enjoy the pay leave. PADOH also claimed that it assigned Allen and Lehman to convert the 2005 lab data since 2006 (94a:5-6), they could get the pay leave. PADOH admitted it unfinished the 2005 lab data by Sept 2010 (74a), its staffers could enjoy the pay leaves.

However, the District Court erred in siding with the Defendants: "it is evident that Wei was not dissuaded from making or supporting a charge of discrimination by virtue of these two written reprimands. To the contrary, Wei made almost weekly complaints to the DEEO, which were in addition to his many more formal complaints to the EEOC, PHRC and the courts." as a reason to judge that Wei wasn't retaliated (Appendix C, 22a) as the evidence of no retaliation. The Third Circuit erred in affirmation.

Nevertheless, defining unstopping complains to authorities as the "non-deter" is unconstitutional. If we stop complaint, how could we stop the discrimination? How could the court get the case? This definition is in violation of the Fourteenth Amendment to the United States Constitution. Nevertheless, the Court addressed the "deter" are

for that the employer's acts deterred the employee. In *Burlington N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006), White never stopped her complaints after the employer used reassignment and discipline to deter her and she also complained to EEOC several times. The Court held that the employer's acts deterred her complaint, therefore, it constituted the retaliatory discrimination.

In *Burlington*, the Court gave good examples to explain "deter" was the employer's action:

> "A schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young mother with school age children. Cf., e.g., Washington, supra, at 662 (finding flex-time schedule critical to employee with disabled child). A supervisor's refusal to invite an employee to lunch is normally trivial, a nonactionable petty slight. But to retaliate by excluding an employee from a weekly training lunch that contributes significantly to the employee's professional advancement might well deter a reasonable employee from complaining about discrimination. See 2 EEOC 1998 Manual §8, p. 8–14. Hence, a legal standard that speaks in general terms rather than specific prohibited acts is preferable, for an "act that would be immaterial in some situations is material in others." Obviously, the Court defined deterrence from the behavior of employers rather than employees.

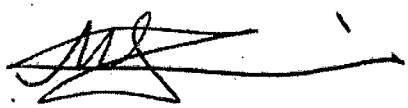
In Wei's case, the "deter" was more obvious, other staffers could take their sick leave, enjoy

their annual leave, get the paying training, access PA-NEDSS, but Wei could not. When PADOH failed to finish converting 2005 lab reports by the deadline of December 19, 2005 and later, then it in 2007 wanted Wei to do that with minimum time, when other staffers didn't fulfill their cleaning duty, Wei had to help them to finish. In contrast, Wei helped them to process (clean and convert) a majority of 2005 lab data with an exceptional pace, but he was discriminated, retaliated, defamed and terminated.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully Submitted:



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