

Case No: 42955-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JAMES M CRAVEN,

Appellant,

v

EMPLOYMENT SECURITY DEPARTMENT,

STATE OF WASHINGTON,

Respondent,

FILED
COURT OF APPEALS
DIVISION II
2012 SEP 11 PM 1:18
STATE OF WASHINGTON
BY DEPUTY

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

1. Did the Respondent’s Brief by ESD Counsel Padilla-Huddleston make and repeat several falsehoods, material omissions, and material and contradictory representations—and thus misrepresentations (CP, RB pp 1-

2 versus page 7) pointed out to and willfully ignored by Judge Pomeroy (CP, CR pp. 9-33; 38-44; 46-63) at least had the effect of hiding the following material facts to presentation of the case and legal findings as well that were raised to the Court and summarily ignored? Were the following specific facts hidden, procedurally not allowed to the detriment of justice, and not addressed by the Court (as a Judge, Officer of the Court, Member of the Bar and Public Servant) thus effectively aiding and abetting serial and intended denials of due process and thus creating highly poisoned fruit of a highly and serially and intentionally poisoned legal tree? And did each failure to address each of the following material facts constitute a separate assignable error?

a. the specific ruling and language by ESD to grant unemployment benefits to the and specific supporting evidence and reasoning in the (ESD's) initial finding ¹;

¹ INITIAL FINDING ESD: "When you opened your unemployment benefits, you reported that you had been suspended without pay by your employer, Clark College. This raised a question about your eligibility for benefits. Your employer told us that you were suspended as of December 11, 2009 and will be returning June 28, 2009. ***They didn't provide any other information [emphasis added].*** You told us that you were suspended for two quarters because of complaints you made in several emails. You provided a copy of the Notice of Discipline dated October 29, 2009 in which your employer refers to complaints filed on April 23, 2009, regarding emails sent prior to that date that were offensive to the recipient. REASONING: Although the emails you sent may have been offensive and may have crossed the line of acceptable behavior, the delay between the discovery of the incident and the imposition of your suspension is longer than reasonably expected of a serious offence. You were permitted to continue working in the interim. Therefore, we conclude that you were suspended at the convenience of

b. that summary rulings by the ESD Commissioner, Judge Sells² and later by Judge Pomeroy, aided by contradictory assertions in the Respondent's brief to Judge Pomeroy, pointed out to and ignored by Judge Pomeroy, effectively hid many material other material facts available in the Court Record, Clerk's Papers and/or pointed out to the Court?:

c) that I am a public employee, tenured professor and whistle blower (and thus entitled to First, Fourteenth Amendment Constitutional Rights—CP, RB pp. 1-4; 7);

d) that I had been initially granted ESD benefits, along with the fact pattern and legal reasoning behind the decision (CP, Respondents Brief (RB), representations on pp. 1, 2 directly contradicted on page 7);

e) that I was granted and paid ESD benefits, and had returned to work by the time of the hearing with ALJ Knutson;

your employer. We can't establish that your actions were sufficiently harmful to warrant your immediate removal, and misconduct is not established." DECISION: Based on the information provided, misconduct has not been established. RESULT": Benefits are allowed beginning 12/13/2009" (ESD Initial determination; CP NOA, Exhibit 2 (pp.1 and 2)

² At trial argument went un rebutted by ESD Counsel, that Both decisions by the ESD Commissioner and Judge Sells were received back, with no comments at all as to what basis for their rulings (no citations of law, facts or documents considered) in such short time as even before notice was received back from the USPS that the appeals and supporting documentation had just been delivered (CP, CR, pp 13-14, 19-27,)

f) that in the summary judicial findings, without any specificity or citations of law in supporting the rulings of Judge Sells, the ESD Commissioner, and both Judge Sells and Judge Pomeroy, all indicated that that ESD was not simply being asked to deny my application and eligibility for ESD benefits that had not yet been granted, and thus no need for an order of repayment of funds with terms for settlement of the debt given my resources (never given), but that I had been determined to be eligible for ESD benefits as Clark College did not even report an alleged or their own reasons and processes for finding reasons for my leave;(CP, Findings of Fact and Conclusions of Law and Order, December 9, 2011 pp. 1-3; CR pp. 60-66) all issues bearing on the due diligence and care in their own judicial reviews;

g) that the issues I raised, all of social importance, on intra-union issues, and public debate, were on an intra-union email list contractually allowed for intra-union communications and dialogue, not subject to surveillance or control by Clark College Administration; that I had made active efforts to ascertain email use policies vis-à-vis the intra-union lists not covered I was told; that I am the first and only person ever charged with violations of alleged email use policies on these lists, and that all of my statements were part of conversations initiated by others, never sent to general lists or membership of the College; that all discussions involved issues of public

concern and importance and potential crimes, such as unqualified adjunct instructors being hired without vetting and outside of normal hiring protocols and procedures, individuals being recruited to file charges against targeted faculty members, and serial denials of due process and corruption in public employment; that all of these facts went unacknowledged, unrebutted and unanswered by ALJ Knutson, the ESD Commissioner, Judge Sells and by Judge Pomeroy (CP, CR pp. 12-30; 44-63; CP, NOA Exhibits 1-30; CP, NOA pp. 532-680; PR, pp. 6-28; PB, pp. 37-481) and were hidden in contradictory representations and material omissions in the Respondent's Brief by Ms. Padilla-Huddleston;

h) that the severity of the discipline imposed (108 days off without pay and attempts to take medical coverage) when no allegations of violations of RCW 50.04.294 were ever made or even alluded to by Clark College in the original report of time off to ESD (CP, CR, pp. 53-55; NOA Exhibit 2 pp. 1-2) was excessive, disproportionate to even the alleged offenses, derived without Lauderhill Hearings and separate penalty phases, and indicative of severe malice, animus and serial denials of due process on the part of Clark College administrators that crafted and imposed them;

i) that The ESD Commissioner, Judge Sells and Judge Pomeroy all refused to consider or give legal evidence, citation of documents and testimonies

considered, or legal reasoning to support, their findings and to counter, my assertion that as a public employee, a tenured professor, and a registered whistle blower against some of the very administrators who had charged me, then served as fact finders, finders of conclusions, assessors of discipline and review authorities all in one, I had and have Constitutional rights including First and Fourteenth Amendment rights to due process which had been serially denied (and never rebutted by ESD) over the course of what is supposed to be progressive discipline with each stage completed with full due process a predicate for any higher levels of progressive discipline which did not occur (CP, CR pp 44-63; PR, pp. 6-28; NOA pp 532-680, Exhibits 2-30; PB, pp 37-481);

j) that the very same administrators, specifically Robert Knight president of Clark College, had produced and manifested fact patterns revealing extreme animus and malice against me, including material and foundational perjury by Mr. Knight in the ESD Appeal hearing before ALJ Knutson (revealed in sworn and unrebutted testimonies of Dr. Marcia Roi of Clark College and Ms Lynn Davidson of WEA subsequent to the ESD hearing by ALJ Knutson, and offered in tapes not admitted by Judge Pomeroy and in testimonies of rebuttal witnesses not allowed to testify de novo in rebuttal to the assertions in the Respondent's Brief);

k) that I was given two quarters off without pay on the basis of apparent serial and malice-driven violations of my basic tenure, contractual and legal rights that were fully documented in my original submission to ESD for unemployment compensation, in the 118 pages of supportings documentation (CP, CR pp. 5-33, 44-58; NOA, pp. 532-680, Exhibits 1-30) and not even addressed or alluded to by any of the fact-finders and judges (CP, NOA pp. 532-680; PR pp. 6-28; PB pp. 37-481; FFCLLO pp. 528-530; CR, pp. 9-11, 13-17, 19-27); and that in the basis of their decision to grant me unemployment benefits there were no lies or any form of deception in my application to ESD and I complied with all requirements for unemployment compensaton;

l) that the initial burden was on the employer to demonstrate that the finding of ESD for me against Clark College, to be granted benefits, was arbitrary and capricious and without foundation, fraudulen; yet my employer did not even state a reason or alleged offenses to ESD, only the time period off for my disciplinary leave without pay and the false and contradictory representations in the Respondent's Brief effectively hid all these issues from review or even being raised and addressed along the way;

m) that under the Clark College-AHE Contract, and basic constructs of due process, progressive discipline at each higher stage is predicated on

previous lower stages having been properly and fully completed. The higher level discipline, of two quarters off without pay, was summarily imposed, under protest, while allowable appeals were still pending and while decisions on one stage of appeal--arbitration--is still pending at the time of appeal of ALJ Knutson's ruling of non-eligibility. Further, the two previous forms of discipline (7 days off and 8 days off without pay) contractually the lower-level predicates for higher level progressive discipline, were determined while I was on sick leave with no Lauderhill Hearings, with discipline to commence upon my return to work, and with the discipline then carried out with no appeals in one case (union was played with promises of suspended timelines later summarily dropped) and only one out of three allowable appeals in another case (union elected not to go to expensive arbitration);

n) that further, evidence was provided, ignored by all Judges and fact-finders and clear deliberate no mention made in the Respondent's brief (CP, RB pp. 4-7), that the same individuals who charged me (Clark College president Robert Knight), or recruited and rewarded proxies to file charges, were the very same individuals (with provable histories of extreme malice and animus against me for whistleblowing) who then turned their own allegations into formal charges; then acted as judges and

“fact finders” including what would be “allowable” versus “non-allowable” evidence of their own charges; then acted as jurors on those charges; then acted as assessors of discipline after “findings” of guilt; and, even then acted as review authorities on two of three possible stages of appeal; this is serial violation of basic 14th Amendment due process rights per se (CP, NOA pp.532-680; PR. pp. 6-28; PB pp 37-481; CR, pp. 13-27); this is serial denial of due process per se;

o) that evidence of perjury by president of Clark College in the ESD appeals hearing surfaced subsequent to it in an Arbitration Hearing on the same issues, from sworn and cross-examined and unrebutted testimonies of Dr. Marcia Roi, president of Clark College Association of Higher Education and Ms Lynn Davison of Washington Education Association, along with serial violations of due process in the predicate stages of progressive discipline (That the president of Clark College, the central decision-maker, the initiator of charges or proxies making charges, charging authority, investigating authority, assessor of discipline and appeal authority—all in one person—in two of three allowable appeals, said to both of them at the same time and place: “Morale will improve here when we get rid of professor Craven”.) This Mr Robert Knight, president of Clark College, had denied under oath in the hearing with ALJ

Knutson; his sworn testimony in the form of tapes and court record, combined with the arbitration brief of Ms Lisa Lewison representing WEA in arbitration with Arbitrator Katheryn Whalen, indicating perjury during the ESD Appeal hearing with ALJ Knutson, was presented to and summarily ignored by, Judges Sells and Pomeroy;

p) that also ignored and pointed out to Judge Pomeroy with no rebuttal from Counsel for ESD, were outright misrepresentations and falsehoods (pointed out to and ignored by Judge Pomeroy (CP, CR pages 7, 9-11, 13-14, 15-28, 31-33, 44-60) and in the supporting documents available to Judge Pomeroy (CP, NOA, pp. 532-680; PR, pp. 6-28; PB pp. 37-481) that related to the alleged existence of email policies and allegations in the RB that I did not obey them or try to comport with them; falsehoods as to the exact nature of the charges against me (never Sexual Harassment, never Gross Misconduct under RCW 50.04.294) by and in, the Respondent's brief and as well as oral submissions in Superior Court with Judge Pomeroy (CP, PR, July 7, 2011 pp. 6-28; PB August 9, 2011 pp. 499-524; RB, September 2, 2011 pages 1 and 2 versus 7, pp 2-7, p. 9, 10, 12, 13, 14,15, 18, 19, 21,); These charges were allowed to be presented and considered even when never made by the Employer in any charge or document;

q) that the Respondent's brief repeatedly and falsely states that I took no issue with the findings of the ESD Commissioner and ALJ Knutson and thus unchallenged findings are "verities on appeal" (CP, Respondent's Brief pages 9 lines 4-7, 11 lines 18-22, 12 lines 6-12; Court Record, CR, pp 9-14) and this is an outright falsehood, easily disproved from the petitions for appeal and review, and I would argue intentional fraud upon the Court of Judge Pomeroy easily discoverable had Judges Sells and Pomeroy read my basic Request for Review to Judge Sells and the Head ALJ to review ALJ Knutson's conduct and abusive judicial temperament, my own submissions in rebuttal, and in the four witnesses I brought to rebut and were not allowed to do so, (in the CP, Petition for Review January 7, 2011 pp 6-28, CP Petitioner's Brief November 10, 2011 and Court Transcript with Judge Pomeroy CR, pp 3- 60, p. 66);

r) that none of my specific allegations and supporting evidence, in my original written submissions and documents to ESD bearing on issues of possible conspiracy against rights (18 USC Article I Chapter 13 Parts 241 and 242), nor to the hearing ALJ, were specifically addressed in any responses; nor were my allegations and supporting evidence of outright falsehoods and misrepresentations in the Respondent's brief and submissions to the Court addressed. (CR pointed out and ignored by

Judge Pomeroy in CR pages 7, 9-11, 13-14, 15-28, 31-33; CP, PR, July 7, 2011 pp. 6-28; PB August 9, 2011 pp. 499-524; RB, September 2, 2011 pages 1 and 2 versus 7, pp 2-7, p. 9, 10, 12, 13, 14,15, 18, 19, 21,);

s) that procedural rulings were made with no receipt or acknowledgement of my request to listen to, under the de-novo review authority of the Court, submitted tapes of the hearing by Judge Knutson *and respond to my concerns of possible abusive judicial temperament, conduct and tones of speech* (to be attested to in sworn statements by witnesses who felt intimidated and unfairly constrained by the ALJ) and open biases and personal opinions by Judge Knutson, that I believe interfered with my defense per procedural error on my parts, a pro se Appellant, that could have been easily corrected without prejudice to the Respondent; rebuttal testimonies from 4 witnesses present not allowed. (CP, CR, pp. 4-5, 7-10);

t) that there was no substantive addressing of the issue raised to Judge Pomeroy, that the judicial process had to be continued due to Clark College waiting until 6:34 pm the night before the hearing with ALJ Knutson, to commence at 11 am the next morning, to send to me at a public mailbox I was not likely to access prior to the hearing, the materials to which I was entitled under discovery (while their own discovery rights, and other due process rights denied me were fully complied with long

before the hearing); and this contempt for basic due process, and the hearing itself, along with documentation of patterns of such conduct by Clark College that was presented, should have resulted in a determination of default on their appeal as if Clark College had never showed up; This is particularly the case I assert when it is clear that Clark College did not even appear to consider the charges serious enough to even give a reason and supporting evidence for the terms and basis of my 108 days off for discipline nor did they impose discipline immediately but timed it at their convenience all along. (CR, pp. 1-5; CP Exhibit 2 pp 1-2);

u) that representations of the sworn testimony, under penalty of perjury, of two representatives of my union, Ms Lynn Davidson and Dr. Marcia Roi, in my arbitration hearing that occurred well after my hearing with Judge Knutson, embodied in my Petitioner's Brief, which is the final stage of my appeal that is yet to decide the very issue of whether or not I was legally and justly given two quarters off without pay, along with tapes of two previous meetings with Clark College president Robert Knight, indicate that critical and sworn testimony of president Robert Knight (that he never said to both of my union representatives "Morale will improve around here when we get rid of Jim Craven" and when asked previously about this alleged statement that he refused to deny having made it only because he

asks and does not answer questions in hearings) before Judge Knutson was likely perjured testimony and likely very material to the outcome; this was all summarily dismissed arbitrarily and capriciously by Judge Pomeroy including in my oral submissions to the court. The critical issue of “fruit” not of an unintentionally poisoned legal foundation (tree), but intentionally and serially poisoned fruit was summarily ignored, along with the fact that I am a tenured professor, a public employee, a whistleblower against the very persons who charged, convicted me, assessed discipline (with no separate phase even specified and imposed without any Laudermill hearings or appeals and while I was on medical leave) all ignored by Judge Pomeroy and with no mention made to these stipulated to facts in the Respondent’s Brief and oral submissions to the Court of Judge Pomeroy (CP, NOA, Exhibits Numbers 4 (1-2); 5 (1-3); 6 (1-3); 7 (1-2); 8 (1-3); 9 (1-2); 11 (1-3); 11 (1-4); 12 (1-2); 13 (1-2); 14; 15 (1-3); 17 (1-56); 18; 19; 20; 21 (1-3); 22 (1-18); 23 (1-2); 24 (1-6); 25 (1-10); 28; 29; CP, CR, pp. 19-24); specifically ignored in the Respondent’s Brief and by Judge Pomeroy in any substantive way other than to take the representations of Counsel for Respondent without rebuttal, the issue of proportionality of discipline imposed relative to severity of alleged offenses along with the fact that discipline was pre-determined and pre-imposed without a Laudermill Hearing and/or without

a separate phase allowing for mitigation and factors in determining severity of discipline; (CR, pp. 3-33, 44-64)

v) that the serious Constitutional issues were never addressed such as First (Freedom of Protected Speech) and Fourteenth Amendments (equal treatment and due process prior to the taking of life, liberty or property) along with evidence submitted of a long campaign for my removal, that included a secret file of some 4900 pages in six binders from Clark College for past whistleblowing, was summarily ignored yet was clearly part of the reason for my being granted unemployment compensation in the first place (CP, NOA, pp 532-680 see Exhibits 1-30) No citations of law as to why I as a tenured professor, public employee and whistle blower, do not have Constitutional Protections of First Amendment and Fourteenth Amendment of the U.S. Constitution the Supreme Law of the Land that reaches everywhere, that guarantees First and Fouteenth Amendment property,liberty and free speech rights, and trumps all law, administrative codes etc, pretextual reprisals against whistle blowers that conflict with it.³;

³ In 1985 the U.S. Supreme Court decided a case that set standards for government agencies contemplating the termination [or serious discipline] of an employee. The case, *Cleveland Board of Education v. Loudermill*, examined the Fourteenth Amendment due-process rights of public employees and recognized that those rights may be characterized

as either “property” or “liberty” rights. [*Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 541 (1985)]. On December 10, 2007, the U.S. Supreme Court (*City of Newport News v. Sciolino*, 76 U.S.L.W. 3303 (U.S. Dec. 10, 2007), *cert. denied*, 2007 LEXIS 13055 (Dec. 10, 2007)) denied review of a decision made by the U.S. Court of Appeals for the Fourth Circuit that examined the “liberty” rights of a probationary police officer [on grounds of probationary status]. [*Sciolino v. City of Newport News*, 480 F.3d 642 (4th Cir. 2007)] This type of claim is based on the combination of two distinct rights protected by the Fourteenth Amendment: (1) the liberty “to engage in any of the common occupations of life,” [*Roth*, 408 U.S. at 572 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 [1923])], and (2) the right to due process “[w]here a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him.” [*Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)] To state this type of liberty interest claim under the due-process clause, a plaintiff must allege that the charges against him (1) placed a stigma on his reputation; (2) were made public by the employer; (3) were made in conjunction with his termination or demotion; and (4) were false. [*Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 173 n. 5 (4th Cir. 1988)].

Sciolino was a probationary employee who had no protected “property” interest in his employment with the City of Newport News. However, he did have due-process rights that prevent a public employer from depriving him, and any probationary employee, of his “freedom to take advantage of other employment opportunities.” [*Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972)] The due-process clause of the Fourteenth Amendment provides that a “liberty interest is implicated by public announcement of reasons for an employee’s discharge.” (*Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990))

The U.S. Supreme Court has recognized that the U.S. Constitution does not and should not “penalize forthright and truthful communication between employer and employee [*Bishop v. Wood*, 426 U.S. 341, 350 (1976)].” And “that a *purely private* communication of the reasons for an employee’s termination cannot form the basis for a due process claim. A public employee is entitled to a “name-clearing” hearing depending on a particular situation, but such situations certainly arise only when the agency is contemplating employment termination or a significant demotion; when the action is based on or made in conjunction with stigmatizing allegations of misconduct that imply dishonesty, corruption, or immorality; and when the charges are made public or are likely to be disseminated. [See *Johnson v. Martin*, 943 F.2d 15, 16–17 (7th Cir. 1991)] (liberty interest implicated only when stigmatizing statement actually disseminated to potential employer); see: *Clark v. Mann*, 562 F.2d 1104, 1116 (8th Cir. 1977) (stigmatizing statement “would be available to prospective employers”); *Buxton v. City of Plant City*, 871 F.2d 1037, 1045–46 (11th Cir. 1989) (presence of stigmatizing information in personnel file that was made public sufficient to trigger liberty interest); *Brandt v. Bd. of Coop. Educ. Servs.*, 820 F.2d 41, 44–45 (2d Cir. 1987) (public disclosure includes personnel file that is “likely to be disclosed to prospective employers”) In the *Sciolino* case, the court noted the U.S. Supreme Court’s recognition of a due-process right “[w]here [one’s] good name, reputation, honor, or integrity is at stake because of what the government is doing to him.” Due process protections in the “*at-will*” context apply only (1) where a government employer has made public allegedly false statements that stigmatize the employee and (2) where the agency has imposed a termination from

employment or a significant demotion. *Sciolino*, 480 F.3d at 646, quoting *Constantineau* at 437 *Paul v. Davis*, 424 U.S. 693, 701 (1976) (publication of stigmatizing charges alone, without damage to “tangible interests such as employment,” does not invoke the due-process clause) The question must first be examined by considering the status of the employee. Employees who have successfully completed entry-level probation have earned a property right in their employment, and that right may not be infringed by the employer without due process. However, law enforcement organizations often employ high-ranking officials who serve “at the pleasure” of the chief law enforcement officer or the employing government as members of a command staff. Likewise, when an agency promotes a tenured officer to a supervisory rank, it commonly imposes a period of promotional probation. *Bd of Regents of State Colleges v Roth*, 408 U.S. 576–77 (1972) notes explicitly that tenured public employees are entitled to know and challenge reasons for dismissal or for significant discipline). See, for example, Public Local Laws of Maryland, Art. 4, §16–17(3) (police commissioner authorized to appoint members of command staff “to serve at his pleasure”). It is quite clear from this case that “[a] public employer who fires (or refuses to rehire) an employee in a manner that sullies the employee’s good name and restricts his future employment opportunities deprives him of important liberty interests protected by the Fourteenth Amendment.” If the public employer imposes on an employee punitive, disciplinary action less than termination then *Sciolino* at 649, citing *Roth*, 408 U.S. at 573.–The *Sciolino* court indicated that the *Mathews* scheme could also be used to evaluate whether the City of Newport News had afforded Officer Sciolino with sufficient due process, even though it also recognized that the officer did not have a protected property interest. The letter written by the chief of police stated, “On September 16, 2003, I met with you in accordance with City Policy to provide you the opportunity to respond to the allegation against you. . . .” However, the court could not decide this aspect of the case here because, procedurally, “[t]he record in this case is not sufficiently developed to make this sort of evaluation.– *Sciolino*, 480 F.3d at 646, n. 1. To respect a probationary employee’s liberty rights, the employer should provide the employee with some due process before terminating employment. The U.S. Supreme Court has instructed that *some form* of a hearing is required before the government may finally deprive an individual of a property interest the essential, fundamental requirement is that the employee be provided with an opportunity to be heard at a meaningful time and in a meaningful manner. (*Mathews v. Eldridge*, 424 U.S. 319, 333 (1976))sets out a three-part test to determine whether the procedural due process provided meets constitutional standards; for purposes of determining the constitutional adequacy of administrative procedures, identification of the specific dictates of due process generally requires consideration of three distinct factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail) See also *Bishop v. Wood* - 426 U.S. 341 (1976) on due process and free speech rights of public employees and their parameters. First Amendment Rights of Public Employees and the terms under which they apply are supported in *Pickering v. Board of Education* - 391 U.S. 563 (1968) and in *Connick, v. Myers* 461 U.S. 138, (1983)

w) that totality of evidence was summarily, arbitrarily and capriciously ignored, representations were allowed without reference to the original documents and their totality of context and language, that I was sanctioned for speech related to union business in media that were not supposed to be accessible to Clark College management (like management sanctioning someone for speech in a union meeting) on the basis of complaints filed by individuals recruited, and rewarded (with public resources and jobs) to do so (in some cases complaints were not even by the individuals allegedly offended and never served) by individuals in Clark College management that had expressed in writing and to witnesses verbally, manifestations of extreme animus and malice against me and thus were in inherent conflicts of interest in acting on the complaints they engineered; Further, Counsel for the Respondent offered a misquote from the

Document High Noon referred to as one of the reasons for my disciplinary leave and that misquote is significant (RB page 6, lines 1-3) AND Judge Pomeroy did not demand to see the totality of the document quoted from (CP, CR pp. 13-20) as I requested (CP, CR pp. 16-19). First of all, analogies are not equivalences or identities they are invitations to make comparisons or suggested comparisons whether in simile, metaphor or allegory form. Also the exact statement was that. Judge Pomeroy noted that she would make a determination de novo, presumably based on her own sensibilities as she refused to even read the totality of what was written from which snippets were taken (CP, CR pp. 16-19, pp. 44-64) that I was guilty as charged and deserved the discipline given yet refused to examine fully the documents from which inculpatory snippets were being quoted along with other alleged falsehoods and misrepresentations in the Respondent's Brief and in oral submissions (CR, pp 13-34, 44-65);

x) . that evidence was ignored that I had raised, in the far past, and recent past, and present, serious issues with law enforcement in my capacity as a public employee (where even one lie or attempt to misuse law enforcement for private agenda are serious crimes CP, CR, pp. 51-53), that previous allegations had been substantiated, and that the content of my whistleblowing was being attacked and suppressed, under pretexts, by

the very persons in management who were often the subjects of any allegations (CR pp 59-65 pp. 13-34, 44-65, CP NOA, pp 532-680, Exhibits 2-30);

y) that evidence was ignored of extreme animus and malice by those charging me and imposing time off without pay: specifically four copies of the same letter, two delivered to my home and not official mailing address, notifying me of a finding of guilt for alleged violations of Clark College policies on postings of messages on various lists and imposing discipline, on December 23, 2009, while I was on sick leave, in the hospital critical care unit recovering from heart surgery, with no Lauderhill Hearing and no appeals; (CP, PR January 7, 2011; PB August 9, 2011; CR pp. 3-34, 44-65);

2. Was ESD Counsel Padilla-Huddleston in breach of her legal and professional responsibilities as an AAG, Officer of the Court, Member of the Bar and Public Servant in the repeated, material omissions, misrepresentations, contradictory representations embodied in her Respondent's Brief and oral submissions to the Court?

3. Was Judge Pomeroy in breach of her legal and professional responsibilities as a Superior Court Judge, Officer of the Court, Member

of the Bar and Public Servant, and did she effectively aid and abet denial of 14th Amendment due process process rights under color of law, in not addressing and investigating prior to any Judicial decision, the serial, blatant and documented (by me in oral and written submissions in the Court Record and Clerk's Papers previously cited) material omissions, contradictory representations and thus misrepresentations, possible perjury by Mr. Robert Knight and derivative felonies of a public servant committing perjury while in official legal proceedings acting as a public employee on public duty as well as those embodied in the Respondent's Brief and oral submissions of ESD Counsel?

4. Was there past, and still in the present, an ongoing campaign to harrass and intimidate me and my family to pay back alleged ESD overpayments, by high levels of Washington State ESD and in concert with the AG's Office, without a Court Order from Judge Pomeroy, while an appeal to WCA Division II has been pending and not yet formally dismissed and have these past and present machinations, including while I was in China and seriously ill, garnishment of my daughter and her mother's bank account because my name was on it but never used by me, not only an intended and effective inteferrence with my pro se representation, but also

constituting fraud upon and contempt for this Appeals Court of WCA Division II?

STATEMENT OF THE CASE

I. Substantive Facts: Disciplinary Leave without Pay 108 Days (CP, NOA, Exhibit 2- pp. 1-2) a. Appellant, James Craven, a tenured Professor of Economics; Public Employee; Registered Whistle Blower against public corruption and serial violations of public employee Constitutional and Civil Rights.

b. Appellant filed for unemployment benefits after calling ESD, advising them of disciplinary leave without due process, being told by ESD in a telephone inquiry to apply for benefits as I might be eligible if my allegations were sustained; submitted 118 pages of documents in support of my assertion that discipline was without due cause in reality as reprisals for whistle blowing under contrived pretexts, and in fact serial violations of Constitutional 14th Amendment due process rights and First Amendment rights along with other possible crimes alleged and previously reported to law enforcement, of several possible felonies by some of those involved in all phases of the disciplinary actions. (CP, NOA, Exhibits 4 (1-2); 5 (1-3); 6 (1-3); 7 (1-2); 8 (1-3); 9 (1-2); 11 (1-3); 11 (1-

4); 12 (1-2); 13 (1-2); 14; 15 (1-3); 17 (1-56); 18; 19; 20; 21 (1-3); 22 (1-18); 23 (1-2); 24 (1-6); 25 (1-10); 28; 29)

II. Procedural Facts

Respondent's Brief made several falsehoods, material omissions, and material and contradictory representations—and thus misrepresentations (CP, RB pp 1-2 versus page 7) pointed out to and ignored by Judge Pomeroy (CP, CR pp. 9-33; 38-44; 46-63) that appear were intended to hide and/or had the effect of hiding material facts that were pointed out by me without effect and were easily discoverable from the Exhibits 1-30 of the Clerk's Papers of the Court Record, the Petition for Review and other previously cited documents forming the Clerk's Papers.

a. the ruling by ESD to grant unemployment benefits to the Appellant and the specific supporting evidence and reasoning in the (ESD's) finding for my being given ESD benefits even while on disciplinary leave⁴;

⁴ INITIAL FINDING ESD: "When you opened your unemployment benefits, you reported that you had been suspended without pay by your employer, Clark College. This raised a question about your eligibility for benefits. Your employer told us that you were suspended as of December 11, 2009 and will be returning June 28, 2009. *They didn't provide any other information [emphasis added]*. You told us that you were suspended for two quarters because of complaints you made in several emails. You provided a copy of the Notice of Discipline dated October 29, 2009 in which your employer refers to complaints filed on April 23, 2009, regarding emails sent prior to that date that were offensive to the recipient. REASONING: Although the emails you sent may have been offensive and may have crossed the line of acceptable behavior, the delay

b. summary rulings by the ESD Commissioner, Judge Sells⁵ and Judge Pomeroy, aided by contradictory assertions in the Respondent's brief that hid previously cited supporting material facts in Assignment of Error: 1) that I am a public employee, tenured professor and whistle blower (and thus entitled to First, Fourteenth Amendment Constitutional Rights (CP, RB pp. 1-4; 7); 2) that I had been initially granted ESD benefits, along with the fact pattern and legal reasoning behind the decision (CP, Respondents Brief (RB), representations on pp. 1, 2 contradicted on page 7); 3) that I was granted ESD benefits, already paid them and had returned to work by the time of the hearing with ALJ Knutson; the rulings of Judge Sells and Judge Pomeroy both of which indicated that they were unaware of the most basic fact that ESD was not simply being asked to deny my application and eligibility for ESD benefits that had not yet been granted, and thus no need for an order of repayment of funds with terms for settlement of the debt given my resources, but that I had been determined

between the discovery of the incident and the imposition of your suspension is longer than reasonably expected of a serious offence. You were permitted to continue working in the interim. Therefore, we conclude that you were suspended at the convenience of your employer. We can't establish that your actions were sufficiently harmful to warrant your immediate removal, and misconduct is not established." DECISION: Based on the information provided, misconduct has not been established. RESULT": Benefits are allowed beginning 12/13/2009" (ESD Initial determination; CP NOA, Exhibit 2 (pp.1 and 2)

⁵ At trial argument went un rebutted by ESD Counsel, that Both decisions by the ESD Commissioner and Judge Sells were received back, with no comments at all as to what basis for their rulings (no citations of law, facts or documents considered) before even notice was received back from the USPS that the appeals and supporting documentation had just been delivered (CP, CR, pp 13-14, 19-27.)

to be eligible for ESD benefits as Clark College did not report even an alleged reason for my leave, I had been paid the benefits and had returned to work long before the first ESD appeal hearing with ALJ Knutson (CP, Findings of Fact and Conclusions of Law and Order, December 9, 2011 pp. 1-3; CR pp. 60-66); 4) that the issues I raised, all of social importance, on intra-union issues, and public debate, were on an intra-union email list contractually allowed for intra-union communications and dialogue, not subject to surveillance or control by Clark College Administration, I am the first and only person ever charged with violations of alleged email use policies, and that all of my statements were part of conversations initiated by others, never sent to general lists or membership of the College, and involved issues of public concern and importance such as unqualified adjunct instructors being hired without vetting and outside of normal hiring protocols and procedures, individuals being recruited to file charges against targeted faculty members, and serial denials of due process and corruption in public employment all of which went unacknowledged, unrebutted and unanswered by ALJ Knutson, the ESD Commissioner, Judge Sells and by Judge Pomeroy (CP, CR pp. 12-30; 44-63; CP, NOA Exhibits 1-30; CP, NOA pp. 532-680; PR, pp. 6-28; PB, pp. 37-481) 5) that this bears on the extent and care taken in consideration of available evidence prior to their findings as well as serial denials of due process

(“liberty” and “property”) and freedom of speech rights in the workplace when commenting on matters of public concern and importance; 6) that the severity of the discipline (108 days off without pay and attempts to take medical coverage) when no allegations of violations of RCW 50.04.294 were ever made or even alluded to in the original report of time off to ESD (CP, CR, pp. 53-55; NOA Exhibit 2 pp. 1-2)

d. The Commissioner, Judge Sells and Judge Pomeroy all refused to consider or give legal evidence, citation of documents and testimonies considered, or legal reasoning to support their findings and to counter, my assertion that as a public employee, a tenured professor, and a registered whistle blower against some of those who had charged me, I had and have Constitutional rights including First and Fourteenth Amendment rights to due process which had been serially denied (and never rebutted by ESD) over the course of what is supposed to be progressive discipline with each stage completed with full due process a predicate for any higher levels of progressive discipline which did not occur (CP, CR pp 44-63; PR, pp. 6-28; NOA pp 532-680, Exhibits 2-30; PB, pp 37-481)

1. Please also see, refer to and consider the attached my original appeal of the decision by ALJ Richard Knutson to grant appeal of Clark College and the decision of ALJ John Sells to sustain the decision by Judge

Knutson, which found against ESD, and thus me also, for ESD having granted me unemployment benefits while I was on disciplinary leave for two academic quarters without pay; compensation immediately granted (and only at the last minute appealed) on the basis of the following reasoning by ESD [see footnote 2])

The ESD Commissioner, ALJ Knutson, Judge Sells and Judge Pomeroy all failed to address the reasoning as to why I was granted ESD benefits even while on disciplinary leave for 108 days, the fact that I completely and honestly reported all allegations and supporting materials used by Clark College (CP, NOA, pp 532-680) Clark College made no claim or charge of misconduct in their initial report to ESD of my time off, and even bypassed the issues altogether by allowing Clark College and ESD to not even address them. The essentially de novo findings of Judge Sells and Judge Pomeroy in their content and syntax showed they were unaware that they were ruling for a return of ESD benefits rather than a denial of eligibility for benefits not yet received and why specifically I had been granted benefits as a result of Clark College not even reporting an alleged cause for my discipline of 108 days off without pay; this was partly as a result of calculated and contradictory representations in the Counsel for the Respondent's Brief; Both judges gave summary de novo opinions

based on incomplete and highly tainted records. (CP, RB, Pages 1 and 2 versus opposing representation on page 7; CP, CR pages 59-65; Order of Judge Sells)

2. I was given two quarters off without pay on the basis of apparent serial and malice-driven violations of my basic tenure, contractual and legal rights that were fully documented in my original submission to ESD for unemployment compensation, in the 118 pages of supportings documentation (CP, CR pp. 5-33, 44-58; NOA, pp. 532-680, Exhibits 1-30) and not even addressed or alluded to by any of the fact-finders and judges (CP, NOA pp. 532-680; PR pp. 6-28; PB pp. 37-481; FFCLLO pp. 528-530; CR, pp. 9-11, 13-17, 19-27); and the basis of their decision to grant me unemployment benefits--and there were no lies or any form of deception in my application to ESD and I complied with all requirements for unemployment compensaton; The initial burden was on the employer to demonstrate that the finding of ESD for me to be granted benefits was arbitrary and capricious, or based upon fraud, yet my employer did not even state a reason to ESD, only the time period off for my disciplinary leave without pay.

3. At present I am under siege from ESD to pay back alleged ESD benefits improperly paid with this appeal pending and even as Judge Pomeroy,

when apprised of the fact that I had been paid benefits already and returned to work, noted that I would not have to pay back alleged monies owed if an appeal is pending, yet despite this, despite my repeated requests to have them apprised of my situation and references to the Court Record, my credit rating has been damaged and I have been subject to repeated demands to pay back by ESD. This, I believe, indicate a campaign of cover-up and coordination by the AG's Office and ESD to continue the cover-up of the fact that ESD granted me benefits because of no allegations or cause given by Clark College as to why I was on disciplinary leave or even that I was on disciplinary leave and the time lapsed between charges and imposition of discipline (CP, CR. pp. 59-64; Footnote 2 in this document) Imagine if we did executions with appeals pending. This has also compromised my ability to represent myself pro se in this and other courts due to continual harassment by ESD for repayment of ESD benefits with no judicial order for repayment or settlement terms and prior to ruling on this appeal by WCA Division II.

4. Under the Clark College-AHE Contract, and basic constructs of due process, progressive discipline at each higher stage is predicated on previous lower stages having been properly and fully completed. The higher level discipline, of two quarters off without pay, was summarily

imposed, under protest, while allowable appeals were still pending and while decisions on one stage of appeal--arbitration--is still pending at the time of appeal of ALJ Knutson's ruling of non-eligibility. Further, the two previous forms of discipline (7 days off and 8 days off without pay) contractually the lower-level predicates for higher level progressive discipline, were determined while I was on sick leave with no Lauderhill Hearings, with discipline to commence upon my return to work, and with the discipline then carried out with no appeals in one case (union was played with promises of suspended timelines later summarily dropped) and only one out of three allowable appeals in another case (union elected not to go to expensive arbitration). Further, evidence was provided, ignored by all Judges and fact-finders and clear deliberate no mention made in the Respondent's brief (CP, RB pp. 4-7), that the same individuals who charged me (Clark College president Robert Knight), or recruited and rewarded proxies to file charges, were the very same individuals (with provable histories of extreme malice and animus against me for whistleblowing) who then turned their own allegations into formal charges; then acted as judges and "fact finders" including what would be "allowable" versus "non-allowable" evidence of their own charges; then acted as jurors on those charges; then acted as assessors of discipline after "findings" of guilt; and, even then acted as review authorities on two of

three possible stages of appeal; this is serial violation of basic due process rights per se (CP, NOA pp.532-680; PR. pp. 6-28; PB pp 37-481; CR, pp. 13-27)

5. Evidence of perjury by president of Clark College in the ESD appeals hearing from sworn and cross-examined and unrebutted testimonies of Dr. Marcia Roi, president of Clark College Association of Higher Education and Ms Lynn Davison of Washington Education Association, along with serial violations of due process in the predicate stages of progressive discipline (That the president of Clark College, the central decision-maker, the initiator of charges or proxies making charges, charging authority, investigating authority, assessor of discipline and appeal authority—all in one person—in two of three allowable appeals, said to both of them at the same time and place: “Morale will improve here when we get rid of professor Craven”.) This Mr Robert Knight, president of Clark College, had denied under oath in the hearing with ALJ Knutson; his sworn testimony in the form of tapes and court record, combined with the arbitration brief of Ms Lisa Lewison representing WEA in arbitration with Arbitrator Katheryn Whalen, indicating perjury during the ESD Appeal hearing with ALJ Knutson, was presented to and summarily ignored by, Judges Sells and Pomeroy. Also ignored and pointed out to Judge

Pomeroy with no rebuttal from Counsel for ESD, outright misrepresentations and falsehoods (pointed out and ignored by Judge Pomeroy (CP, CR pages 7, 9-11, 13-14, 15-28, 31-33, 44-60) and in the supporting documents available to Judge Pomeroy (CP, NOA, pp. 532-680; PR, pp. 6-28; PB pp. 37-481) that related to the alleged existence of email policies and allegations that I did not obey them or try to comport with them; falsehoods as to the exact nature of the charges against me (never Sexual Harassment, never Gross Misconduct under RCW 50. 04. 294) by and in, the Respondent's brief and as well as oral submissions in Superior Court with Judge Pomeroy (CP, PR, July 7, 2011 pp. 6-28; PB August 9, 2011 pp. 499-524; RB, September 2, 2011 pages 1 and 2 versus 7, pp 2-7, p. 9, 10, 12, 13, 14,15, 18, 19, 21,) The Respondent's brief repeatedly and falsely states that I took no issue with the findings of the ESD Commissioner and ALJ Knutson and thus unchallenged findings are "verities on appeal" (CP, Respondent's Brief pages 9 lines 4-7, 11 lines 18-22, 12 lines 6-12; Court Record, CR, pp 9-14) and this is is an outright falsehood, and I would argue intentional fraud upon the Court of Judge Pomeroy easily discoverable had Judges Sells and Pomeroy read my basic Request for Review to Judge Sells and the Head ALJ to review ALJ Knutson's conduct and abusive judicial temperament, my own submissions in rebuttal, and in the four witnesses I brought to rebut and

were not allowed to do so, (in the CP, Petition for Review January 7, 2011 pp 6-28, CP Petitioner's Brief November 10, 2011 and Court Transcript with Judge Pomeroy CR, pp 3- 60, p. 66)

5. None of my specific allegations and supporting evidence, in my original written submissions and documents to ESD bearing on issues of possible conspiracy against rights (18 USC Article I Chapter 13 Parts 241 and 242), nor to the hearing ALJ, were specifically addressed in any responses; nor were my allegations and supporting evidence of outright falsehoods and misrepresentations in the Respondent's brief and submissions to the Court addressed. (CR pointed out and ignored by Judge Pomeroy in CR pages 7, 9-11, 13-14, 15-28, 31-33; CP, PR, July 7, 2011 pp. 6-28; PB August 9, 2011 pp. 499-524; RB, September 2, 2011 pages 1 and 2 versus 7, pp 2-7, p. 9, 10, 12, 13, 14,15, 18, 19, 21,)

6. No receipt or acknowledgement of my request to listen to, under the de-novo review authority of the Court, submitted tapes of the hearing by Judge Knutson *and respond to my concerns of possible abusive judicial temperament, conduct and tones of speech* (to be attested to in sworn statements by witnesses who felt intimidated and unfairly constrained by the ALJ) and open biases and personal opinions by Judge Knutson, that I believe interfered with my defense per a procedural error on my part that

could have been easily corrected without prejudice to the Respondent; rebuttal testimonies from 4 witnesses present not allowed. (CP, CR, pp. 4-5, 7-10)

7. No addressing of the issue that the judicial process had to be continued due to Clark College waiting until 6:34 pm the night before the hearing to commence at 11 am the next morning, to send to me at a public mailbox I was not likely to access prior to the hearing, the materials to which I was entitled under discovery (while their own discovery rights, and other due process rights denied me were fully complied with long before the hearing); and this contempt for basic due process, and the hearing itself, along with documentation of patterns of such conduct by Clark College that was presented, should have resulted in a determination of default on their appeal as if Clark College had never showed up; This is particularly the case I assert when it is clear that Clark College did not consider the charges serious enough to even give a reason and supporting evidence for the terms and basis of my 108 days off for discipline nor did they impose discipline immediately but timed it at their convenience all along. (CR, pp. 1-5; CP Exhibit 2 pp 1-2)

8. Representations of the sworn testimony, under penalty of perjury, of two representatives of my union, Ms Lynn Davidson and Dr. Marcia Roi,

in my arbitration hearing that occurred well after my hearing with Judge Knutson, embodied in my Petitioner's Brief, which is the final stage of my appeal that is yet to decide the very issue of whether or not I was legally and justly given two quarters off without pay, along with tapes of two previous meetings with Clark College president Robert Knight, indicate that critical and sworn testimony of president Robert Knight (that he never said to both of my union representatives "Morale will improve around here when we get rid of Jim Craven" and when asked previously about this alleged statement that he refused to deny having made it only because he asks and does not answer questions in hearings) before Judge Knutson was likely perjured testimony and likely very material to the outcome; this was all summarily dismissed arbitrarily and capriciously by Judge Pomeroy including in my oral submissions to the court. The critical issue of "fruit" not of an unintentionally poisoned legal foundation (tree), but intentionally and serially poisoned fruit was summarily ignored along with the fact that I am a tenured professor, a public employee, a whistleblower against the very persons who charged, convicted me, assessed discipline (with no separate phase even specified and imposed without any Lauderhill hearings or appeals and while I was on medical leave) all ignored by Judge Pomeroy and with no mention made to these stipulated to facts in the Respondent's Brief and oral submissions to the Court of

Judge Pomeroy (CP, NOA, Exhibits Numbers 4 (1-2); 5 (1-3); 6 (1-3); 7 (1-2); 8 (1-3); 9 (1-2); 11 (1-3); 11 (1-4); 12 (1-2); 13 (1-2); 14; 15 (1-3); 17 (1-56); 18; 19; 20; 21 (1-3); 22 (1-18); 23 (1-2); 24 (1-6); 25 (1-10); 28; 29; CP, CR, pp. 19-24)

9. The serious Constitutional issues were never addressed such as First (Freedom of Protected Speech) and Fourteenth Amendments (equal treatment and due process prior to the taking of life, liberty or property) along with evidence submitted of a long campaign for my removal, that included a secret file of some 4900 pages in six binders from Clark College for past whistleblowing, was summarily ignored yet was clearly part of the reason for my being granted unemployment compensation in the first place (CP, NOA, pp 532-680 see Exhibits 1-30) No citations of law as to why I as a tenured professor, public employee and whistle blower, do not have Constitutional Protections of First Amendment and Fourteenth Amendment of the U.S. Constitution the Supreme Law of the Land that reaches everywhere, that guarantees First and Fouteenth Amendment property,liberty and free speech rights, and trumps all law, administrative codes etc, pretextual reprisals against whistle blowers that conflict with it.⁶

⁶ See op cit footnote 3.

10. Evidence was summarily, arbitrarily and capriciously ignored, representations were allowed without reference to the original documents and their totality of context and language, that I was sanctioned for speech related to union business in media that were not supposed to be accessible to Clark College management (like management sanctioning someone for speech in a union meeting) on the basis of complaints filed by individuals recruited, and rewarded (with public resources and jobs) to do so (in some cases complaints were not even by the individuals allegedly offended and never served) by individuals in Clark College management that had expressed in writing and to witnesses verbally, manifestations of extreme animus and malice against me and thus were in inherent conflicts of interest in acting on the complaints they engineered; Further, Counsel for the Respondent offered a material misquote from the Document High Noon referred to as one of the reasons for my disciplinary leave and that misquote is significant (RB page 6, lines 1-3) AND Judge Pomeroy did not demand to see the totality of the document quoted from (CP, CR pp. 13-20) as I requested (CP, CR pp. 16-19). First of all, analogies are not equivalences or identities they are invitations to make comparisons or suggested comparisons whether in simile, metaphor or allegory form. Also the exact statement was that. Judge Pomeroy noted that she would make a determination de novo, presumably based on her own sensibilities as she

refused to even read the totality of what was written from which snippets were taken (CP, CR pp. 16-19, pp. 44-64) that I was guilty as charged and deserved the discipline given yet refused to examine fully the documents from which inculpatory snippets were being quoted along with other alleged falsehoods and misrepresentations in the Respondent's Brief and in oral submissions (CR, pp 13-34, 44-65)

11. Evidence was ignored that I had raised, in the far past, and recent past, and present, serious issues with law enforcement in my capacity as a public employee (where even one lie or attempt to misuse law enforcement for private agenda are serious crimes CP, CR, pp. 51-53), that previous allegations had been substantiated, and that the content of my whistleblowing was being attacked and suppressed, under pretexts, by the very persons in management who were often the subjects of any allegations (CR pp 59-65 pp. 13-34, 44-65, CP NOA, pp 532-680, Exhibits 2-30)

12. evidence ignored of extreme animus and malice by those charging me and imposing time off without pay: specifically four copies of the same letter, two delivered to my home and not official mailing address, notifying me of a finding of guilt for alleged violations of Clark College policies on postings of messages on various lists and imposing discipline,

on December 23, 2009, while I was on sick leave, in the hospital recovering from heart surgery, with no Laudermill Hearing and no appeals; (CP, PR January 7, 2011; PB August 9, 2011; CR pp. 3-34, 44-65)

13. Refusal to address in any serious way other than to take the representations of Counsel for Respondent the issue of proportionality of discipline imposed relative to severity of alleged offenses along with the fact that discipline was pre-determined and pre-imposed without a Laudermill Hearing and/or without a separate phase allowing for mitigation and factors in determining severity of discipline; (CR, pp. 3-33, 44-64)

D. ARGUMENT

I believe that the brief written by Ms. Lisa Lewison, submitted also to Judge Pomeroy in my INITIAL REQUEST FOR APPEAL TO THURSTON COUNTY SUPERIOR COURT, and thus available to ESD Counsel and ESD well before trial (CP, PB Aug 9, 2011 pages 37-481), she was also representative in the arbitration, that occurred after the hearing and rulings of Judge Knutson and the ESD Commissioner and will serve as ARGUMENT and will serve to frame the rest of my argument and some supporting evidence. I am not an attorney and am representing

myself Pro Se, I ask for no special privileges as I believe in my opponents being afforded all the due process that they serially denied me, but I respectfully ask Your Honor to accept her submission to the arbitrator for the rest of this brief, amended with small details for accuracy (original also attached), as she was also directly involved in many of the issues and events to be discussed at trial and was a direct witness to the sworn and cross-examined testimonies of Dr. Marcia Roi and Ms. Lynn Davidson that exposed potential perjury on the part of Clark College president Robert Knight during the previous ESD Appeal with Judge Knutson⁷ I

⁷ Lisa Lewison hereby submits her Closing Arguments on behalf of James Craven:

I. INTRODUCTION

On Thursday, November 3, 2010 and Friday, November 4, 2010, an arbitration took place on the Clark College Campus in Vancouver, Washington, involving Clark College (hereinafter “the College”) and the Clark College Association of Higher Education (hereinafter “the Association”).

II. STATEMENT OF THE ISSUE

The Association and the College stipulated to the following issue statement:

“Did Clark College have just cause to impose a 108-day (2-term) suspension to Professor Craven? If no, what is the appropriate remedy?”

III. RELEVANT PROVISIONS OF THE AGREEMENT

* Article III, A. 2 and 5 * Article VIII, G.

Professor James Craven has been a tenured Professor of Economics at Clark College since September 1992. He is featured in multiple academic versions of Marquis “Who’s Who in: the World; America; the West; Science and Engineering; Finance and Industry; American Education and has been nominated as Weilun Visiting Professor of Economics

at Tsinghua University in Beijing, the MIT of China (only four given each year in the world) three times. Mr. Craven has served as a visiting professor in China on four occasions, and recently was asked to join the Editorial Board of a journal of the journal Review of International Critical Thought of the Chinese Academy of Social Sciences.

Mr. Craven has served as the Clark College Business Division Chair from 2001-2009, was a member of the AHE Senate for over seven years, and served on multiple academic committees. Mr. Craven volunteered as the Faculty Sponsor for the Native American Student Association and the Veteran's Club. Mr. Craven is a traditionally painted, named (Omahkohkiaaiipooyii) enrolled Blackfoot Indian, from the Apatohsipiikani (Northern Peigan) Blackfoot Band in Alberta, has served as a tribal judge, and is published in aboriginal law. Mr. Craven is a Vietnam-era veteran of the US Army from 1963-1966.

On October 15, 2007, Mr. Craven attended an "Open President's Dialogue." Mr. Craven asked a question of President Bob Knight, who angrily shouted him down, effectively silencing the audience for the remainder of the forum. Jennifer Wheeler, former President of the Classified WPEA union attended the forum, and testified she took verbatim notes, which she provided to Mr. Craven and his union.

On Friday, November 9, 2007 AHE President, Dr. Marcia Roi and UniServ Director Lynn Davidson met with President Knight and Vice President of Instruction, Rassoul Dastmozd, for a labor management meeting in his office. While in this meeting AHE President Roi, told President Knight there was a "morale problem on the campus." President Knight responded "there is not a morale problem; morale will improve when we get rid of Professor Craven." This was never refuted by management in the hearing. This testimony, by Dr. Marcia Roi and Ms. Lynn Davidson, sworn under penalty of perjury, directly and irreconcilably contradicted the sworn testimony of President Knight during the previous hearing before ALJ Knutson, that he never made such a statement and that, when asked twice, in two different meetings, about if he had made such a statement, he not only denied having made the statement, he also claimed that he had only refused to answer and affirm or deny the statement (meetings were taped), in two separate meetings, because he was there to ask not answer questions.

2007, 2008, 2009 were difficult years for Professor Craven on the Clark College Campus, as the College began "piling on" discipline in an attempt to get rid of him. During this time frame, Mr. Craven served as a visiting Professor in China on three occasions and was also on medical leave for great durations due to recovery from one possibly two heart attacks. [Add: two emergency heart surgeries December 19th and 23rd 2008]

Mr. Craven suffered a heart attack and from September 2008, and was on medical leave until April, 2009. While on leave, Ted Kotsakis, Dean of Business and Technology, initiated a Division Chair election to remove Professor Craven from the position of Division Chair, which he had held since 2001 and which he was not due to leave until September 2009.

The Collective Bargaining Agreement (Article III. Personnel, I.) Division Chairs provides clear and unambiguous language delineating the process by which a Division

Chair is elected. Mr. Kotsakis, contrary to the Collective Bargaining Agreement, inserted himself in the Division Chair election process which resulted in Mr. Craven losing the Division Chair position, wages, and associated benefits. As a result, Professor Adnan Hamideh was elected Division Chair.

In February 2009 Mr. Craven and Mr. Hamideh exchanged emails on College email related to the responsibilities of Division Chair. Professor Craven received a letter from Mr. Kotsakis on February 17, 2009, notifying him that his email dated February 6, 2009 at 10:49 AM "has been brought to my attention as being threatening, harassing, and abusive" and notifying him that upon his return to work he would be given the opportunity to respond to all concerns raised by this investigation. In fact, as the evidence established, the words threatening, harassing, and abusive were the words of Mr. Kotsakis and others in the administration.

Mr. Craven received a letter from Katrina Golder, Vice President of Human Resources, on April 27, 2009, referencing e-mail sent on February 6, February 8, and April 20th, 2009. Ms. Golder informed Mr. Craven, "This is to advise you that the College has received a complaint from Adnan Hamideh regarding the emails of April 20, February 6 and February 8, 2009;" the College enclosed copies of the referenced emails and the April 20th complaint, as attachments.

Clearly the College failed to comply with the Collective Bargaining Agreement (Article III. Personnel, A. #5) which states "Any complaint not called to the attention of the faculty member within ten (10) contracted days of notice to the College, may not be used as the basis for any disciplinary action against a faculty member." Prior to April 27, 2009, Mr. Craven had received no communication from the College that there was any concern regarding a February 8, 2009 email.

The April 27th, 2009 letter said in part, "this is to advise you that the College has received a complaint from Adnan Hamideh regarding the emails of April 20th, February 6 and February 8, 2009." This was shown to be untrue through the cross-examination of Mr. Hamideh and Ms. Golder. No complaint was filed regarding the February 6th or 8th emails; the only complaint filed was in regard to an April 20th email sent from Mr. Craven to Mr. Hamideh.

Mr. Craven sent an email on April 20, 2009 to Mr. Hamideh, the members of his Division, AHE President Dr. Marcia Roi, and WEA UniServ Director, Lynn Davidson. In this email Mr. Craven expressed displeasure regarding what he viewed as violations to the Collective Bargaining Agreement related to seniority rights and assignment of classes. Mr. Craven testified he used a metaphor in his email which contained the word Palestinian, referring to behavior, not to a specific individual. Professor Gene Johnson and Professor Gerard Smith both testified to their knowledge of Mr. Craven's use of metaphors in writing and in speech.

AHE President, Dr. Marcia Roi, sent an email to all AHE Faculty and Adjuncts on the AHE union list on March 18, 2009. President Roi sent the email specifically on a list set up by the College for union business. Ms. Roi, Mr. Johnson, and Mr. Craven all testified

to receiving this union communication on the union list. Phil Sheehan, Director of Information and Technology Services, testified to the existence, creation, and purpose of this list, and that this list, indeed, "was specifically meant for union business."

The title of President Roi's email was P.S. Academic Freedom and Tenure. Ms. Roi testified she sent the email because there were a lot of rumors and fear on the campus about the denial of tenure of faculty, and that multiple faculty had responded to her email, including Mr. Craven.

Mr. Craven testified that he did, indeed, respond to the union email, on the union list, and the intent of his email was to express concern and empathy for two faculty members, Christina Kopiniski and Ali Aliabadi, who did not receive tenure. In his response, Mr. Craven used the quotation "Chemical Ali" when questioning what may have been the College's rationale for denying professor tenure. Mr. Aliabadi and Mr. Craven exchanged additional emails based on Mr. Aliabadi's questioning of Mr. Craven's use of the term "Chemical Ali." Email evidence proves Mr. Craven apologized, repeatedly, on union email to Mr. Aliabadi, and explained the context [Addendum JAMES CRAVEN: that Professor Craven was told by Professor John Fite that Aliabadi, whom Professor Craven still has never met and hence no animus between them, had jokingly introduced and referred to himself, in conversations with John Fite and two other faculty members, as "Chemical Ali" because he taught Chemistry and his name was Ali; hence this ascribed nickname "Chemical Ali" was placed in quotes] himself- of his use of quotation marks-- and that he meant no harm. Mr. Aliabadi responded, and accepted Mr. Craven's apologies, and the matter was resolved professionally between the two individuals on the union email. [Addendum JAMES CRAVEN: Mr. Craven's apologies to Professor Aliabadi were taken and used as some kind of admission of guilt and consciousness of guilt when they were really no more than Craven's sensitivity in wanting to apologize for any harm felt even if unintended, unforeseeable and without any malice or animus or intent to disparage Professor Aliabadi in any way.]

Ms. Roi and Mr. Johnson testified they interpreted Mr. Craven's union email as concern for faculty who were denied tenure. Mr. Johnson, in his testimony, likened the union email exchange as "an electronic union meeting."

Mr. Craven received a letter from Mr. Kosatkis on April 9, 2009, informing him the College had received a complaint and that "the email dated March 18, 2009 at 3:05 PM sent by you to Marcia Roi, Kimberly Sullivan, AHE adjuncts and AHE faculty has been brought to my attention as threatening, harassing, and abusive."

Mr. Kosatkis testified he received Mr. Craven's March 18, 2009 email from Julie Lemmond, an Adjunct and AHE member who had received the email on the AHE Union list. Upon receipt Ms. Lemmond forwarded Mr. Craven's email from the union list to Mr. Kotsakis, her Dean, with a simple message "fyi."

Ms. Golder, when cross examined about the "complaint" Mr. Kotsakis had referenced in his April 9, 2009 letter testified the... "College never had received a complaint" about the March 18, 2009 email and that "an email in and of itself is not a complaint." Ms. Golder,

when asked about Ms. Lemmond, further testified that “Ms. Lemmond had had issues with Professor Craven” and the College had lost an Unfair Labor Practice filed by the Union/Professor Craven based on Ms. Lemmond’s and the College’s refusal to provide information and evidence that was potentially being used against Professor Craven for disciplinary purposes. The Public Employee Relations Commission’s December 9, 2008 award demanded Ms. Lemmond and the College produce the documents in question.

The College hired an external investigator Amy Stephson in April 2009 to investigate Mr. Craven matters. Ms. Stephson testified she had met with the College in advance of meeting with Mr. Craven, and she had been paid \$10,000 for her work.

Mr. Aliabadi was later contacted by Vice President Katrina Golder, on April 28, 2009 and was asked to meet with Investigator Stephson regarding the March 18, 2009 email exchange. Mr. Aliabadi expressed concern regarding how the College was aware of this union communication and interchange on union email; that he had no complaint with Mr. Craven, and he viewed the matter to be resolved. Mr. Aliabadi refused to meet with Investigator Stephson, as he [Aliabadi] “has no grievances with him [Craven]”. AHE President, Dr. Marcia Roi testified she was contacted by Mr. Aliabadi for advice about Ms. Golder’s email, and told her he was greatly disturbed the College was pursuing this, as he viewed this to be a union issue, and that the matter had been resolved. There was testimony that Mr. Aliabadi was offered by Katrina Golder assistance in finding future employment if he would agree to file a complaint and meet with the investigator.

Mr. Craven sent an email titled High Noon, on April 27, 2009 to union members on the union email list. In this email he stated “this happened before with initiatives 601 and 602 that threatened cutbacks and layoffs initially. Union membership went up, the entrepreneurial types jockeyed for close proximity and face-time with administrators, supposed friends betrayed supposed friends, and GI Joe’s did a booming business on “kneepads and chapstick.” Mr. Craven testified he was speaking in past tense, the early 1990’s, and that the email was a reference to the movie High Noon when the townspeople sent the sheriff out by himself to fight for them and then covered and tried to make deals for themselves. Mr. Craven further testified his email was a call of support for their AHE Union President, Dr. Marcia Roi, and for faculty “to not just stick her out there alone.” Mr. Craven went on further in his email to address criticisms of College President Bob Knight, and congratulated President Roi for her efforts to challenge the issue whether or not Mr. Knight was qualified to serve as President as he had been hired without open competition for the position contrary to the Board of Trustees protocols and handbook and without holding the established minimum credentials for the position.

Mr. Dastmozd received an email April 29, 2009 at 3:38 PM from Adjunct Professor, David Reed about a concern he had regarding an email he had read on the AHE union list authored by Mr. Craven. Mr. Dastmozd, 1 minute after reading the email, forwarded the email to Ms. Golder and Mr. Kotsakis.

Mr. Craven received a letter from Mr. Kotsakis on May 13, 2009, with a corresponding email; date/time stamped after 5 PM, notifying him the College had received an email from Adjunct Instructor David Reed. The College informed Mr. Craven they had become

aware of this matter on May 11, 2009 and that “this email contains comments that may be viewed as inappropriate and of a sexual nature.”

The Collective Bargaining Agreement (Article III. Personnel, A. #5) provides clear and unambiguous language regarding the expectation for the College to provide notice of complaints within 10 days. The date/time stamps of the emails prove the College did not notify Mr. Craven of the David Reed complaint in a timely manner. [Nor did Mr. Craven ever see a copy of the complaint]

Ms. Golder sent an email with attachments to Mr. Craven Tuesday, May 26, 2009 at 6:27 PM notifying him the College would be including the David Reed/High Noon email/complaint in the topics to be investigated by Ms. Stephson.

The AHE and Mr. Craven had repeatedly asked the College to provide any and all documentation that was to be used as a basis for determining any discipline. The Reed/Dastmozd email exchange was never provided to the union. The union became aware of the email/document in a June 2009 meeting with Ms. Stephson when they noticed a stack of papers to which she was referring.

Mr. Reed was cross examined by Ms. Lewison and when asked if there was any reference to oral sex in the High Noon email Mr. Reed testified, “No, there is not.” Further, Mr. Reed testified he had done an internet search to search the meaning of “Kneepads and Chapstick” in preparation for the hearing. Ms. Lewison asked why he felt the need to do a search of the meaning, if he already was certain of the meaning. Mr. Reed testified “It was part of his due diligence to prepare for this hearing.” Mr. Reed had no answer when asked why he would/could feel personally named and offended, enough to make a complaint, by reference to a general climate in the early 1990s when he was not at Clark College and with no reference to him personally. And in his “due diligence” on the subject of the common meaning or use of the metaphor “kneepads and chapstick” he apparently failed to find the easily available “Urban Dictionary” entry which lists many meanings having nothing to do with anything sexual.

Ms. Stephson met with Mr. Craven, AHE President Dr. Marcia Roi, and WEA-Riverside UniServ Director Lynn Davidson on June 6, 2009. **Mr. Craven, Ms. Roi, and Ms. Davidson testified they asked Ms. Stephson repeatedly for any complaints, documentation, and/or reason(s) Mr. Craven was being investigated, and received the response “It will become apparent as we go along.”**

Phil Sheehan, Director of Computing Services, sent an email to all faculty and adjuncts on Thursday, June 11, 2009 reminding them “the two special lists (AHE faculty and AHE Adjunct Faculty) were created for the purpose of conducting union business.”

Ms. Stephson met with several individuals throughout the course of her investigation and prepared a written report, submitted to the College on June 17, 2009.

Mr. Johnson testified he was interviewed by Ms. Stephson. Specifically, Mr. Johnson recalled Ms. Stephson asking him the meaning of “Kneepads and Chapstick” and that he

told her about his time in Catholic School with Sister Rose, a Dominican Nun. From his upbringing, the meaning was “kissing the bishops ring, and the protocol when you get presented with his ring you kneel down to kiss it.”

During cross examination, the union asked Ms. Stephson why key information and witness information from her interviews, supportive of Mr. Craven, was not included in her findings of fact. Ms. Stephson testified she had decided the friends and colleagues of Professor Craven were not credible and that they had been given the “Craven Party Line,” and thus, this was her rationale for not including the information. Ms. Stephson’s response shows she was biased and any possibility of objectivity in regard to her investigation of Mr. Craven was completely compromised.

As further evidence of Ms. Stephson’s predisposition the union specifically asked her about her interview with Mr. Johnson and why she did not include any of the information shared by Mr. Johnson as evidence in her report. Ms. Stephson testified she “...found him to be rude and dismissive and I did not take what he had to say seriously.” [Addendum: Further, Ms Stephson, in her report, made no reference to her ex parte (without the knowledge of the union representing Mr. Craven who thought that the union representing him had been advised and that no lawyer would dare go around someone’s legal representation) request of “Your legal opinion” and legal arguments (Craven not an attorney) that was submitted to her; nor did she address any of the arguments made by Mr. Craven in the requested submission. Further, Ms. Stephson made no reference to the four copies of the same letter notifying Mr. Craven of pending discipline (two sent to his home address and two sent to his official mailing address that Clark College had used many times), sent on December 23, 2009, while he was in a critical care unit at Southwest Medical Center as a result of two emergency heart surgeries December 19th and December 23rd 2009. Ms Stephson asked for and was given those four letters and when and to where they had been mailed, as she admitted that this was evidence of serial and extreme malice and animus on the part of those charging him or causing him to be charged through use of proxies.]

On October 29, 2009 the College sent Mr. Craven a certified letter announcing there was merit to impose a 108-day suspension (2-terms) without pay based on the series of emails dated from February, March, and April 2009. This conclusion was announced prior to any hearing, and prior to any meeting for Mr. Craven to respond to any allegations. In the letter the College further notified Mr. Craven it was their intent to terminate his medical benefits from January 4, 2010 through June 18, 2010.

Mr. Smith testified he had sent an email to Mr. Craven on November 4, 2009 in which he expressed frustration with the lack of fundamentals of due process at Clark College, and that the College has a reckless disregard for your well-being. He continued “...many faculty can attest, and classified staff as well, that the administration at Clark despises you and wishes you gone, and will use whatever pretense to make that happen.”

On or about November 12, 2009 Mr. Craven learned the College had changed the online course registration and given firm commitments to replacements, had removed him from his assigned classes for Winter and Spring Quarters 2010. On November 16, 2009 at 7:09

AM Mr. Craven sent an email containing the changed schedules to AHE President, Dr. Marcia Roi and WEA-Riverside UniServ Director, Lisa Lewison. To date, the College had not yet met with Mr. Craven to afford him an opportunity to respond to their assertion that there was merit to impose a 108-day suspension without pay. The one Lauderhill Hearing that Mr. Craven got, the verdict, and action on the verdict was made prior to the very hearing on November 20, 2009 to determine if or if not he would be teaching Winter quarter.

The union represented Mr. Craven in a meeting with the College on Friday, November 20, 2009. On December 1, 2009, Clark College formalized its already concluded 108-day suspension without pay in a letter to Mr. Craven, informing him he would serve the suspension at the start of the Winter Quarter 2010 and conclude with the Spring Quarter 2010.

AHE President, Dr. Marcia Roi, interceded on Mr. Craven's behalf, and informed the College that terminating Mr. Craven's and his family's medical benefits was punitive; the union was successful in persuading the College to reinstate Mr. Craven's and his family's medical benefits.

Mr. Craven served a 108-day (2-term) suspension without pay, and returned to work teaching summer school in June 2010.

College is a legal partner with the union to the Collective Bargaining Agreement and thus has a legal obligation to uphold the provisions contained therein.

The Collective Bargaining Agreement (Article III. Personnel, A. Discipline/Right to Due Process/Representation, 2) provides that: "No faculty member will be disciplined without just cause." Mr. Kotsakis testified he was familiar with the Seven Steps of Just Cause and recalled during the grievance process, Lisa Lewison, WEA-Riverside UniServ Director, had provided a handout of the Seven Steps of Just Cause, and she had verbally walked the College through their obligations of just cause. Dr. Marcia Roi, President of AHE, testified she was trained in the Seven Steps of Just Cause by her UniServ Director, Ms. Lewison, and was present at all steps of the grievance process.

Ms. Roi further testified Mr. Kotsakis, Mr. Dastmozd, Ms. Golder, and Mr. Knight would have been present at various stages of the grievance process, and thus, all were aware of the College's obligation to the Seven Steps of Just Cause, as articulated by Ms. Lewison, per the Collective Bargaining Agreement.

The College did not have just cause to impose a 108-day suspension for Mr. Craven. The College violated many of the Seven Steps of Just Cause. Judge Robert F. Oberstein in Waste Management of Tuscon, Arizona and UFCW, Local 99 FMCS 09112551718A, who reversed managements' decision to terminate the grievant, advises:

"The question then becomes, have the parties defined just cause, and if so, how? In the absence of a definition within the CBA the arbitrator finds that without formal stipulation the parties have both framed their post hearing arguments and cited within their

respective briefs the often quoted seven tests of just cause developed by arbitrator Daugherty (46 LA 359) either directly or indirectly as expounded upon by other arbitrators. Therefore, those same mutually seven tests will be our standard within this discussion to determine if the employer violated the requirements of the CBA.”

The College repeatedly acted with animus towards Mr. Craven. The College regularly ignored the expectations of due process as it relates to discipline of any employee. The College did not conduct a fair investigation. The College did not afford equal treatment toward Mr. Craven and was not even-handed with their expectations of him v. fellow faculty for union and College email usage. The College’s imposition of a penalty was excessive, and not reasonably related to a proven offense or Mr. Craven’s record.

As of November 13, 2007, no meeting had occurred with Mr. Craven to inquire about his participation in the forum. No complaint(s) had been provided to Mr. Craven. The email exchange between Mr. Kotsakis, Mr. Dastmozd, and Ms. Golder, in advance of any meeting with Mr. Craven had already concluded his guilt, and massaged, in advance, how the College was going to get around its contractual due process obligations related to a fair investigation.

Mr. Smith testified Mr. Craven was known for using metaphors and was an expert in figurative language. Particularly, Mr. Smith, in his November 4, 2009 email to Mr. Craven, stated, “Your reference to Palestinians was not directed at Adnan. You did not mention his name, and you can point to similar metaphors in which you use the term “hang-around-the-fort” Indian to illustrate the same principle. Again, you have been found guilty without due process....These fundamentals of due process do not exist at Clark College.” When Mr. Smith was asked to comment on the purpose of his statement, he testified “Due process is not always followed when it comes to Jim.”

Mr. Craven sent an email to Ms. Lewison on November 16, 2009, sharing two printed versions of the College’s published class schedules. The first version showed Mr. Craven teaching Winter Quarter 2010, while the second version showed a correction, with Mr. Craven’s name removed from the schedule, and adjuncts replaced in the schedule in the sections originally intended as a part of Mr. Craven’s Winter 2010 teaching load. Mr. Craven and Ms. Lewison were not scheduled to meet with the College until Friday, November 20, 2009 as the first opportunity for Mr. Craven to respond to the Colleges allegation there was merit to impose a 108-day suspension without pay. Ironically, Mr. Craven had foreshadowed the future events in his November 16, 2009 email, stating, “This shows the upcoming meeting to be a fraud and the result already a fait accompli - that is conspiracy per se.”

“...it is well established that “due process as part of just cause requires that an employer conduct a fair investigation, so that when a decision is made involving discipline, the employee can be assured that the facts were fairly and properly gathered and considered.” Cooper City, 118 LA 842 (2003). Also see City of Atlantic Beach, Florida and Fraternal Order of Police, 121 LA 105 (2005); Broward County Sheriff’s Office, 112 LA 609 (Hoffman, 1999).

also respectfully make a motion, in the interest of justice, for a waiver on any maximum length allowed on this brief (if needed) because of the number and complexity of issues involved and the imperative to provide best supporting evidence for any of my own allegations. For the record, Ms Lewison was not my representative when WEA/AHE allowed me and my family to suffer 7 days off with no pay, no Laudermill Hearing and no appeals, and 8 days off with no pay, no Laudermill hearing and only Stage I and II appeals that took place well after impositions of the 7 and 8 days off without pay. Question: What if I had been ordered to pay back the funds to ESD prior to the hearing with Judge Knutson? What if Judge Knutson had ordered me to pay back the employment compensation funds owed prior to his own hearing or indeed prior to this allowed level of appeal with Your Honor? What if Judge Knutson knew me and had expressed and manifested extreme malice and animus against me but went ahead and refused to recuse himself? There is no need to frame, pile-on, deny due process, commit perjury, stand in as a complainant even against the wishes of the one with standing to make a complaint, recruit and reward proxies to file charges against a person clearly guilty of an alleged offense as their guilt should expose, indict and convict them—due process is especially imperative so there are no excuses and those who deserve punishment get it; only the innocent need to be framed and serially denied

basic due process. I was denied due process when I was medically down and most vulnerable and unable to participate in my own defense.

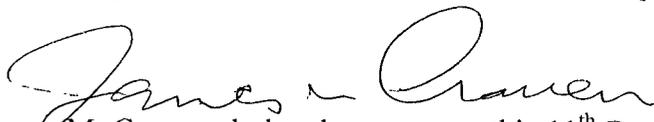
RELIEF SOUGHT: WHEREFORE, Appellant asks for judgment:

- a. Reversing Respondent's decision contained in ESD Review No 2010-5869 as confirmed and ratified in FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CASE NO. 11-2-00047-5 OF Judge Christine Pomeroy; (That the petitioner was ineligible to receive unemployment compensation benefits)
- b. Reversing the Respondent's decision in ESD Review No 2010-5869 of Judge Sells and of the CONCLUSIONS OF LAW IN Thurston County Superior Court Finding No 11-2-00047-5 that The Commissioner's findings of fact are supported by substantial evidence and the finding that The Commissioner's conclusions of law do not constitute an error of law and are otherwise in accordance with the Washington Administrative Procedures Act.
- c. Awarding costs and reasonable attorney's fees as provided in RCW 50.32.160
- d. Referral of matters of potential criminal conduct by anyone involved in this case to appropriate law enforcement agencies (federal or state) if

evidence of possible criminal conduct so supports a substantial basis or cause to believe that investigations of possible crimes are warranted;

e. Restore ALL monies paid to ESD even as this appeal is pending, order to restore any damage to credit rating, determine source or order to pay ESD funds including interest which is only when fraud and misrepresentation is involved and none was ever alleged against me as not even a reason for my 108 days off without pay was given to ESD let alone any claims of fraud or misrepresentation. Even if this Court rules against me, the monies paid to ESD and damage to my credit rating should be restored up to the point of the adverse finding as this also is a violation of my 14th Amendment due process rights and contempt for the Courts as well as it pre-judges how this Court would rule. The question for this Court is why this demand by top-levels of ESD according to several collectors, to pay back benefits with an appeal pending?

e.) Awarding any further relief that this court deems proper;



I James M. Craven, do hereby swear on this 11th Day of September 2012, under penalty of perjury that all statements and representations by me in this brief are true and complete without any purpose and intent of deception to the best of my knowledge and belief and that this brief has been served to Ms Padilla-Huddleston, Counsel for ESD.

Washington State 1
Office of the Attorney General
Acknowledged Receipt, this 11th day
of September, 2012, Time: 11:07
in Olympia, Washington.
Signature: [Signature]
Print Name: Deirdre Heitzler
Assistant Attorney General #31010

Case No: 42955-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JAMES M CRAVEN,

Appellant,

V

EMPLOYMENT SECURITY DEPARTMENT,

STATE OF WASHINGTON,

Respondent,

2012 SEP 11 AM 11:09
ATTORNEY GENERAL
OF WASHINGTON

RECEIVED
11.10.

BRIEF OF APPELLANT

James M. Craven
Professor and
Department Head, Economics
Appellant Acting Pro Se
8002 N.E. HWY-99 PMB-162
Vancouver, WA. 98665
(360) 576-3503

(RAP 17.4(a))

(SUPREME COURT or COURT OF APPEALS, DIVISION II)
OF THE STATE OF WASHINGTON

JAMES M. CRAVEN
APPELLANT v WA.
EMPLOYMENT SECURIT
DEPARTMENT CASE NO.
42955-1-II

) No. 42955-1-II

Washington State
Office of the Attorney General
Acknowledged Receipt, this 11th day
of September, 2012, Time: 11:07
in Olympia, Washington.
Signature: [Signature]
Print Name: D. Hernandez
Assistant Attorney General #31010

) UNDER WCA RAP 1,1 1,2,
10.7,11.2, 18.8b, ALSO
) DUE TO SERIOUS HEALTH
ISSUES, PRO SE STATUS, IN
THE INTEREST OF JUSTICE
AND PURSUANT TO MY
RIGHTS AND DUTIES AS A
PUBLIC EMPLOYEE OF THE
GOVERNMENT OF THE STATE
OF WASHINGTON UNDER
RCW 42.20.100; RCW
42.40.020; RCW 74.34.180; RCW
42.41.040; RCW 42.40.050; RCW
42.40.030. RCW 9A.80. 010; RCW
49.44. 010; RCW 60.68
(MISPRISION OF A FELONY);
RCW 42.40.035; RCW 42.20.110;
NOTICE FOR COMPOUND
MOTION OF RELATED ISSUES
TO: 1) EXTEND PAGES
ALLOWED TO COMPLETE
APPELLANT BRIEF IN
REQUIRED FORM FROM 50 TO
53 PAGES IN THE INTEREST
OF JUSTICE; 2) WAIVER OF
FINES DUE TO: LOW INCOME,
SERIOUS MEDICAL
DISABILITIES; ACTING PRO
SE; SERIOUS ISSUES IN THE
CASE; AND NO INTENT TO
OBSTRUCT OR PERVERT
JUSTICE; 3) MOTION TO
SUBMIT AND HAVE
EXAMINED, FOR REFERENCE
FOR POSSIBLE CRIMINAL
PROSECUTION, WA STATE
BAR, BOARD OF JUDICIAL
REVIEW, EVIDENCE OF
CRIMINAL CONDUCT,
CONTEMPT AND FRAUD
AGAINST THURSTON

ATTORNEY GENERAL
OF WASHINGTON

2012 SEP 11 AM 11:03

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11.11.12