# Claims Of Corporate And Legal Misconduct

## Addendum IV


Walter Tuvell

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# Related Documents

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| Walter Tuvell | August 18, 2011 (version 1.0) | *Claims Of Corporate And Legal Misconduct,* in two Parts: *Part I (Acts Of Fritz Knabe); Part II (Acts of Dan Feldman, HR, Legal).* — Referenced as *"original (two-Part) Complaint"* |
| Walter Tuvell | August 28, 2011 (Version 1.0) | *Claims Of Corporate And Legal Misconduct, Addendum I.* |
| Walter Tuvell | September 4, 2011 (Version 1.0) | *Claims Of Corporate And Legal Misconduct, Addendum II.* |
| Walter Tuvell | September 22, 2011 (Version 1.0) | *Claims Of Corporate And Legal Misconduct, Addendum III.* |
| EEOC | May 20, 1998 | *EEOC Compliance Manual*, EEOC Directives Transmittal number 915.003 |

# Table of Contents

# 48 Executive Summary — Addendum IV

This document is Addendum IV to my original two-Part Complaint plus Addenda I–III.

Hereinafter, the unqualified term "Complaint" includes the original two Parts, plus Addenda I–IV, unless otherwise specified.

## 48.1 List Of Particulars

- **Violation of discrimination-retaliation law.** I have just recently (early October) become aware of the existence and implications of statutory laws prohibiting *"discrimination-retaliation"* (*"D-R"*, defined below). Pursuant thereunto, I hereby allege that ***all*** the blackballing/hostility/abuse/harassment/bullying/IIED/retaliation I've been subjected to, as described throughout this Complaint, has been motivated by, and/or in violation of, D-R (in four areas: most likely (i) age and (ii) disability; perhaps (iii) sex; and potentially (iv) race). Specifically included in this violation of D-R law is all the retaliation stemming from "refusal to enforce established IBM-Law/BCG-Contract policy/procedure/practice" — including "zero-tolerance for retaliation", and "refusal to progress my C&A complaint (negligent/fraudulent investigation)". Moreover, I allege that:[156] (v) all this D-R has been perpetrated with "specific knowledge of deliberate violation of my right to be free of unlawful D-R"; (vi) said D-R has been "outrageous, egregious, evil in motive, undertaken with reckless indifference to legal rights"; (vii) said D-R has been perpetrated by many people, acting in coordinated, secretly pre-established conspiracy, company-wide, at all levels (including Corporate Officers).

- **Fraudulent misrepresentation (tort of deceit).** I have also just recently become aware that the many places I've complained in the Complaint about "breach of contract" are actually worse than that, and should be called by another name. Namely, *breach of contract* refers merely to "non-performance of, or interference with, terms of contract," under the assumption that the contract represents a good-faith bargained-for exchange. But in my case involving IBM-Law/BCG-Contract, there was no good-faith bargaining in the first place. There was never any intention to seriously honor the contract from the beginning — only a desire for me to rely upon the pseudo-contract, knowing full-well that retaliatory detriment would (and did) befall me if I had the temerity (as I did) to complain about illegal/discriminatory acts at all (this ploy was IBM's way of "ferreting out dissidents ['non-team-players']").[157] This kind of intentional deception (false-contract-making) is known as *fraudulent misrepresentation*, or *tort of deceit*.[158] The distinction is important:

156· Language like this supports award of punitive damages, under Massachusetts law. *Haddad v. Wal-Mart Stores, Inc., 455 Mass. 91 (2009).*

157· Under two strong arguments: (i) The many consistent "breaches", by many individual co-conspirators, is a very strong indication of a corporate-management-wide institutional understanding that IBM-Law/BCG-Contract was a mere "piece-of-advertising-paper", not actually a true "contract-to-be-honored". (ii) Dan himself directly indicated that he knew I would not be afforded justice under IBM-Law/BCG-Contract, when he told me "you just don't get it, do you?" (Part II, p. 32).

158· I've only recently learned this terminology. Previously in this Complaint I've used the plain word "fraud" for what I now know should be called "fraudulent misrepresentation". The plain word "fraud" is not totally inapt, at least in ordinary English usage, but it is a discouraged usage in strict legal contexts because it tends to apply more narrowly to a different fact-set ("intentional deception for the purpose of

"breach of contract" sounds only in contract law (which has only relatively weak recovery penalties), while "fraudulent misrepresentation" sounds in tort law (which supports stronger punishment penalties).

- Additional denial of ADA reasonable accommodations, by Russell Mandel.
- Additional D-R by Dan, with even a little "filching"/"theft" of STD benefits thrown in for a change-of-pace (yet another way to administer retaliation/harassment/IIED).

# 49 Typos, Etc.

- Part I, p. 25, bot: Here's another thing I keep forgetting to write down (because I'm not sure how to interpret it, so it's not clear how important it is). At the very end of the demotion meeting in Dan's office on Friday, June 10 — after I'd made it clear to Dan I intended to follow-up with Kelli-ann and an HR process — Dan said to me something along the following lines: "If we [presumably meaning Fritz and Dan] had handled this differently, would you have taken it differently? For example, if I'd told you we needed to deploy your high level of expertise on something more scientifically substantive, such as research projects, instead of just measuring the performance of Wahoo, would you have accepted it well, and not be going the HR route?" I answered, "Of course" (under the assumption he really meant that I'd have been needed to do something like the alternative work he suggested). What was totally unclear to me was whether Dan was proposing a merely "theoretical" question, or whether this was a veiled reference to some "actual ulterior motive". I thought, at the time, that he was talking in a purely "theoretical" manner. But it could have been the case he was really talking about an actual ulterior motive. For example (and this is pure conjecture), could it have been the case that Fritz/Dan didn't like the fact that I was quickly/correctly discovering/reporting the truly poor performance of Wahoo, and wanted to replace me with Sujatha, who would be much slower to "catch on" to the lack of quality in Wahoo, and would fumble around and be much slower to run reliable tests, thereby "buying Wahoo time" to fix its performance problems "before higher management 'caught on'"?[159]
- And here are a couple more things I've discovered concerning the concept/terminology of "STD leave" (see Addendum I, p. 9, fn. 128; Addendum III, bullet item at top of p. 7, and Appendix SS):
  - Dan himself also called it by that very terminology ("STD leave"), in his email of Part II, Appendix M.a, 07/11/2011 08:01 AM, p. 42.
  - In IBM's own description of the STD benefit (http://w3-01.ibm.com/hr/us/benefits/shorttrmdisability.html), the following sentence occurs: "While you're receiving benefits under the IBM Short-Term Disability Income Plan, you're

personal gain by the defrauder, or damage to another"), and is actually a crime and violation of civil law (not just a tort). Though, I do still believe/allege IBM uses their widely advertised "IBM Values" campaign as a way to commit "(plain/strict/criminal) fraud" on the financial world and investing public.

159· This conjecture is not actually mine. It was suggested to me by an acquaintance whom I told my story to. But there might be some validity to it, because it fits the situation well, and fills in some gaps. Too, note that as events actually unfolded, Sujatha did in fact goof up her Wahoo testing badly, causing (with Dan's "help/direction/orders") the situation described in Addendum I, Section 33 ("Dan's Public Embarassment").

considered an active employee." This yet further "puts the lie" to Russell Mandel's absurd retaliation, of refusing to progress my C&A complaint, as well as canceling my electronic and physical to IBM facilities, due to my being out on STD leave (as he voluntarily self-admits).

- Part II, p. 11, mid: "Appendix N" should read "Appendix Q".
- Part II, p. 17, mid: "I'd moved to" should read "I'd be moved to".
- Part II, p. 29 top: "Appendix AB" should read "Appendix BB".
- Part II, p. 32, mid: To first bullet item (M.a), add: "06/24/2011 09:11 AM".
- Part II, Appendix Q, pp. 62–72: The title of Appendix Q says "June 30", but the emails on pp. 71–72 are dated later than June 30. I don't have a good explanation for that discrepancy (just some kind of bug, I guess, but I don't know what kind).
- Another thing I keep forgetting to explicitly point out: In Dan's letter of Part II, p. 133, 07/06/2011 09:20 AM, written in the process of the "three behavior issues" episode, he wrote that he was going be on the lookout for behavior from me that (emphasis added):

  - [S]eems to be inappropriate even if it would normally be tolerated as marginally inside the range of acceptable … [to] help you re-calibrate your discourse … [For example,] [d]on't push "send" until you're reread everything you wrote and *tried to imagine every way in which it could be mis*interpreted.[160]

  This is an obvious retaliatory threat, and it was in fact followed-up with action, namely the "lazy" scandal (Part II, Section 18), with its Formal Warning Letter. What we have here is Dan's spontaneously/voluntarily self-admitting so-called **increased/enhanced scrutiny, without legitimate cause** (noting that there was nothing whatsoever in my previous history that even hinted I had a communication problem, as Dan himself stated in his email of Part II, p. 132, 07/06/2011 07:54 AM). This is, of course, stupidly illegal (D-R). Thanks again, Dan.

- A final word on the "lazy" scandal: That scandal has already been scotched/excoriated in this Complaint, sufficiently enough to satisfy any reasonable person, but one further/final word on the matter wouldn't hurt anyway. In the two emails I sent on July 11 (Part II, Appendix Z, p. 135), I referred to the jocular/humorous nature of "laziness", but I haven't yet given an example of same. I haven't really searched for examples, but one just dropped into my lap, so I'll share it here. It's a recently published article by Joel Stein in Time Magazine. Appendix XX. Stein lampoons, not only himself as "lazy", but *all* Americans. Now, it would be hard to believe Time would risk alienating its reading public with such an article, if Time thought the article could reasonably/potentially/possibly be construed as "firing-offense"-offensive, in this or any universe. Don't you think?
- Addendum I, p. 5: "Part II, p. 25, bot" should read "Part II, p. 15, bot".
- Addendum III, p. 6, bot: "Part II, p. 24, top" should read "Part II, p. 26, mid".
- Addendum III, p. 7, top: "fn. 218" should read "fn. 128".

160· "Interpretation" is hard enough, but of course it's *impossible* to imagine all the ways that something can be "misinterpreted"!

# 50 Smoking Gun / Silver Bullet: Discrimination-Retaliation (D-R)

In early October, during the course of conducting my long-continued research on the topics of this Complaint (and specifically while I was studying the "Healthy Workplace Bill"[161]), I stumbled upon the concept of **"discrimination-retaliation" (D-R)**, which I had not known existed previously.[162] Namely: not only is it (i) illegal for employers to "actually-discriminate" against employees on the basis of protected-class-attributes (which I already had known about); but also it is (ii) *equally* illegal for employers to *retaliate*[163] against employees who *merely assert/pursue their legally protected rights* regarding protected-class-attribute-based-discrimination laws (which I hadn't known about). In particular: it is illegal for employers to retaliate against employees who *issue complaints (internal or external) about discriminatory behavior — whether or not* said complaints ultimately turn out to be "actually-discriminatory". Namely, said complaints only need to have "legal merit", in the sense of "reasonable suspicion" — i.e., "good-faith suspicion of discriminatory animus". This D-R concept applies to all the discrimination statutes involved in my case (Title VII, ADEA, ADA).

I was utterly thunderstruck, because I instantly recognized that D-R is exactly what's happening to me! An amazing wave of relief swept over me. I actually felt a glimmer of joy[164] — for the first time in months — and a ray of hope that I could now start healing my way towards a normal life again. All my legal studies had suddenly paid off: here, finally, was the exact "smoking gun, with silver bullet"[165] I'd been searching for since June 10.

Very obviously, my case is jam-packed with irrefutable evidence of D-R, most of it not even minimally disguised, as fully documented throughout this Complaint (though phrased as only

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161· E.g., http://bullyfreeworkplace.org/id8.html.

162· Though, somehow, I subliminally had the wherewithal to "almost" intuit this, when I wrote already at the very beginning, on June 13 (Part II, Appendix M, p. 37 top): "For, unless I am gravely mistaken, it is my right, according to both 'IBM Law' and civil law, to do what I'm doing, and that retaliation against me for doing so isn't." Though, at that time, I was only referring to the BCG's prohobition against retaliation, not what I now understand as "discrimination-retaliation" in the sense of anti-discrimination statutes.

163· "Retaliation" in this context is *very* liberal, thanks to recent Congressional/Judicial actions/interpretations (esp., BNSF v. White, 548 U.S. 53 (2006)). It merely means: "*tends to dissuade/deter a reasonable employee from asserting/pursuing rights protected under anti-discrimination law*" (especially, complaining internally about suspected/potential actual-discrimination). This is much more liberal than the standard for actual-discrimination (in the sense of "different/disparate treatment", as opposed to "disparate impact"), which refers to "treatment adverse (deleterious, negative, undesirable) to the employee's interest (from the employee's point-of-view), with regard to any aspect/term/condition/privilege of employment; said treatment need not even have a 'significant material effect', such as reduction in salary (*EEOC Compliance Manual,* 8-II.D.3, p. 8-13)." Though, this actual-discrimination definition is relevant to my case, because it supports my original complaint concerning demotion/transfer: a nominally "lateral transfer" can be considered as "adverse" in a number of reasonable ways (e.g., lowered prestige, or visibility of "being jerked off a project in the middle of the night"), and hence fully satisfies my original complaint about suspected/potential (actual-)discrimination.

164· Though it didn't last permanently; I've continued (as I had previous to this new discovery) to suffer periodic attacks of PTSD "flashback".

165· "Smoking gun" here means "cause of action upon which relief may be granted", i.e., strict legal basis/justification for bringing a lawsuit to court. I hadn't been "itching for a lawsuit" — I'd expected the IBM Concerns & Appeals Program would resolve all the issues, as promised by the BCG — but it was clear by now that everyone at IBM is so wholly absorbed/committed/obsessed with full-force retaliation against whistleblowers that I'm going to have no choice. "Silver bullet" means the ammunition required to slay the beast (namely, all the documentation/evidence included throughout this Complaint).

"ordinary-retaliation" ["ordinary harassment/abuse/IIED/etc."] until now, not full-blown "discrimination-retaliation", due to my ignorance of very existence of the concept of D-R, and the lack of direct evidence for "actual-discrimination" itself).

The *proof* of D-R is straightforward — it's already been given in this Complaint, but the D-R aspect simply hasn't been emphasized because I wasn't aware of the concept until now. Here's a review:[166]

- No reason/explanation had/has ever been given to me for Fritz's abuses, or for Dan's demoting me. Part I, Appendix L.b; Part II, Appendix Q, emails of 06/30/2011 08:13 AM p. 63–64 (mind the typo mentioned at Addendum II, p. 5, bottom) and 06/30/2011 10:46 AM, p. 67–68; etc. Naturally, I'd already been searching/begging for reasons/explanations as early as the Excel Graphics incident (Part I, Section 4), but was stonewalled. At that time I briefly considered age-discrimination (among other things), but discounted it because I perceived no good-faith evidence along those lines.

- Dan demoted me on Friday, June 10, but I was too busy (with regular work) for the rest of that day to seriously think about what had just happened to me. Over the weekend of June 11–12, though, I did seriously start thinking that age-discrimination might well be at the root of everything (discriminatory animus giving rise to Fritz's/Dan's behavior yelling/defamation/demotion/blackballing/etc.). My initial thinking along this line started from one obvious fact/event: the "straight" (no change in job descriptions/duties) "switcheroo" (as Dan called it [Part I, Section 6.1, p. 26]) of me with Sujatha. It made no business sense that someone as "advanced" as me would be one-for-one straight-swapped with someone as "retarded" as Sujatha (where "advanced/retarded" are here intended only in the sense of professional qualifications), unless some sort of inexplicable bias/discrimination or ulterior motive were at play. Mulling that over, the clincher for me was that Dan/Fritz had all along *explicitly refused* to (i) have a three-way meeting with me to work things out, or (ii) give me any logical/rational explanations whatsoever for their actions (and, we were all engineers, who highly value logic/rationality, and always properly demanded such explanations from one another in everything we did). "Obviously" (I thought), Fritz/Dan were hiding a "pretty bad secret" — for if their reasons were reasonable/legitimate/legal, they'd have nothing to hide, and they simply would have told me their reasons. Right? Part I, p. 9, fn. 16. This line of thinking cemented the idea of age-discrimination in my mind (i.e., I had a "good-faith" reason for claiming age-discrimination: namely, Sujatha was very far inferior to me with respect to qualifications for the job(s) in question, and was much, much younger than me, yet Dan was straight-"switcheroo/demote"-ing me with her, for motivation/reasons he refused to explain).

- On Friday, June 10, I initiated my HR/C&A IDR (Internal Dispute Resolution) process, by sending an email to Kelli-ann McCabe (Part I, pp. 25–26; Appendix J), but she wasn't available for our briefing meeting until Monday, June 13. There, I

166· This proof will doubtlessly be challenged by IBM's already-known-to-be-corrupt lawyers (thanks to Dan's "nor-have-I-ever" admission) during future proceedings, so will need to be beefed-up at that time. That's OK: I have no qualms whatsoever that this proof is fully adequate modulo legalistic quibbling. After all, the real scope of argument is "the totality of circumstances of the case", not every niggling detail — and at that level, any sane fact-finder (investigator, judge, jury) will have no trouble seeing through IBM's thin smokescreens to the truth.

told her my story, explaining my complaint, orally, as she wrote it down by hand. At one point, the question of *why* Fritz had yelled at me came up (and did the other things he did), and *why* Dan demoted me, and I said I didn't *really* know because nobody would tell me anything, but my best *guess* (based on my thinking over the weekend, see above) was age-discrimination though I couldn't "prove" it.[167]

- On Wednesday, June 15, I explicitly disseminated my accusation about discrimination in writing, in my "Oh Come On" email to Dan, Kelli-ann and Diane Adams. Part II, Appendix N, pp. 45–47. After further reflection during the intervening day (Tuesday, June 14), and for emphasis (to make very sure they really understood me very clearly), I added charges of discrimination on the basis of sex, and perhaps race, in addition to age. I even mentioned that *prima facie* cases were already proven for all three of these (age, sex, race). There can be no question whatsoever that IBM was fully put on very explicit notice of the discrimination-based nature of my complaint.

- All correspondence/communications (such as Kelli-ann's briefing notes, and all emails, such as the "Oh Come On" email) were disseminated to Lisa Due (I made sure of this, in the postscript to my email of 06/14/2011 04:53 PM, and Kelli-ann's reply of 06/15/2011 10:00 AM, see Part II, Appendix M), and thence to all others involved in this case (that's an absolutely essential due-diligence/required procedure of C&A investigations, and of any sane "HR process", right?). So there can be *no doubt* that *everybody* involved in investigating this case was sufficiently notified from the *very beginning* that I'd filed a discrimination-based complaint.[168] Of course I couldn't *prove* any discrimination yet, but there was no need for me to keep harping on that — after all, it was the C&A investigation itself that would determine whether or not proof of discrimination existed, right (I naïvely thought)?

- As thoroughly documented throughout this Complaint, I have been clearly subjected to *unrelenting, unrepentant retaliation* — blackballing/abuse/harassment/bullying/IIED by Dan (with the *explicit* connivance of Diane Adams, HR, Legal [Part II, Section 10.2], and undoubtedly others, in particular John Metzger [Part II, Section 14]) — *beginning immediately after,* and *precisely because of,* the filing of my discrimination-rooted C&A complaint. There can be *no other possible reason* for the retaliation than the filing of the C&A complaint.[169,170]

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167· I have never received a copy of, nor have I even seen, Kelli-ann's notes, so I have no idea whether or not they were accurate/complete. Given Lisa Due's incompetent investigative work (Part II, Section 15), I have my doubts about Kelli-ann's notes. Did she, for example, inadvertently/purposefully omit/distort relevant information (such as, say, my charge about age discrimination)?

168· If everyone involved in the C&A process hadn't been sufficiently notified, I certainly never knew about it. That would be incompetent/corrupt HR practice, to say the least (though we've certainly seen plenty of that in my case). This is another instance where discovery of IBM Lotus Notes archive databases could be dispositive. In my case, I naturally proceeded upon the assumption that sufficient notification had been disseminated to the relevant parties. In any case, any such shenanigans would be legally non-viable; for example, we don't really need/want to get into a "Cat's Paw" analysis, do we?

169· It is well-established that the "temporal proximity" of retaliatory events (beginning instantly in my case), together with "manager awareness", justifies the "inference" of D-R (noting that the First Circuit supports the "strong temporal proximity" interpretation). In my case, the *complete lack of any other reasonable/rational reason* (such as "poor job performance", despite Dan's attempts to "paper my file" going forward) for such obvious/severe/sustained retaliation "seals the deal".

170· An additional consideration is whether or not Dan/HR/Legal/IBM had "actionable/D-R knowledge", in the following sense: "Perhaps IBM's retaliation was based upon the 'mere fact' of complaint, but not upon the

- Lisa Due's insane failure-to-investigate (Part II, Section 15) during the "concern" phase of my C&A process shows that she/IBM did not treat my complaint with the slightest degree of seriousness, even though they were fully aware of the discrimination basis of the complaint. The "reasonable person's" conclusion is that she/IBM resented my complaint, and they were more interested in "getting even" with me for filing it than in preventing discrimination from occurring to me (or to others, in the past/future).
  - Note that during the initial "concern" phase of my C&A process, I primarily targeted Fritz's defamatory conduct, and only secondarily targeted Dan's discriminatory act of demoting me. For, IANAL ("I am not a lawyer"), and I thought (at that early point) Fritz's defamatory actions were "worse" than Dan's demotion, for two reasons: (i) From the point-of-view of ethics/morality (as opposed to the point-of-view of law), Fritz's actions seemed more reprehensible to me. (ii) Recalling that my Complaint is actually entitled "Claims of Corporate and Legal Misconduct", I thought Fritz's Corporate Misconduct (breach of IBM/BCG Law) was "worse" than Dan's Illegal Misconduct, because I could "prove" Fritz's defamation but I couldn't "prove" Dan's discriminatory intent (and, from the IBM/BCG Law point-of-view, I thought Dan's demotion of me was "probably within his purview, and couldn't be challenged via an HR process" [though his *motivation*, by discrimination, wasn't]). Part II, Section 15.
  - However, in my "Oh Come On" letter of June 15, I did explicitly cite Dan's demotion of me as the source of my discrimination suspicion/claim, with the demotion being a direct consequence of Fritz's defamation (or so I thought at that time, not yet suspecting the whole business was motivated by discrimination in the first place). In any case, Lisa Due stated she did investigate Dan (as opposed to Fritz), and found "insufficient facts" (whatever that means) — in particular, she silently dismissed (or, really, intentionally "stonewalled/covered-up") my concerns about discrimination. What's worse, she was a real-time first-hand witness to Dan's ongoing retaliation against me, yet she took a blind-eye approach to it. In other words, she knowingly "refused to investigate" Dan's ongoing retaliation — which is a further retaliatory act in its own right (an intentional version of what is usually called "negligent investigation/retention").
- As for the "appeal" phase of my C&A process, I immediately raised the discrimination charges to Russell Mandel in my email to him on July 1 (Part II, Appendix X, p.

'discrimination-basis' of complaint'?" Here's the analysis: IBM's knowledge of "mere-complaint" occurred on (i) Friday, June 10 (by email to Kelli-ann); and again on (ii) Saturday/Sunday, June 11/12 (by email to Dan and Kelli-ann). IBM's knowledge of "discrimination-basis" occurred on (iii) Monday, June 13 (by oral complaint to Kelli-ann); and again on (iv) Wednesday, June 15 (by email complaint to Dan, Diane and Kelli-ann). The earliest retaliations occurred on (v) Sunday, June 12 (by Dan's "Dear Dr. Tuvell" email [which contained only minimal retaliation {about engaging in IDR and arbitration with a previous company; heightened scrutiny; false statements}; other parts of this email seemed to serve the innocent purpose of escalating the issue to HR and upper management]); and on (vi) Wednesday, June 15 (by Dan's "transition status" nasty-gram, clearly harassing/retaliatory). The "Dear Dr. Tuvell" incident unfortunately must be "thrown out", in the sense of "mere-complaint"-knowledge (hence unprotected by discrimination laws). The "transition status" incident occurred following the oral complaint to Kelli-ann, but before I emailed the written complaint, so IBM might try to argue it was "on the cusp" between "mere-complaint"-knowledge and "discrimination-complaint"-knowledge (though oral complaints do suffice for protection). *All other* acts of retaliation occurred after June 15 — hence they were all irrefutably *with* "discrimination-complaint"-knowledge, and as such they are all protected/actionable.

128, numbered item 7). When I wrote-up Parts I–II of this Complaint document, I again prominently/emphatically raised to everyone's attention the discriminatory nature of my complaint, emphasizing front-and-center that discrimination was a foundational centerpiece of my Theory of the Case. Part I, Section 1.2. And this time I did aim at, not only Fritz's defamatory conduct as I had during the "concern" phase of my C&A process, but also the "blackballing"/bullying/harassment/IIED/retaliatory treatment I'd received from Dan/Diane/HR/Legal *during* the investigation of my "concern" phase (even though I still couldn't "prove" actual-discrimination *per se*, because of Lisa Due's incompetent failure-to-investigate).

- Now, at the present time, in the light of my new-found knowledge/understanding of D-R, the following statement by the EEOC is pertinent: "Suspending or limiting access to an internal grievance procedure also constitutes an 'adverse action.'"[171] Guess what? That's exactly what Russell Mandel has been doing for months. Therefore I hereby allege that Russell Mandel's multiple refusals to progress my C&A complaint (while I'm on STD leave, according to him) is actually an act of D-R, on the basis of ADA-protected (mental) disability, *in addition to* the previously charged D-R based on age/sex/race reasons. Addendum I, Section 36; Addendum II, Section 41. Namely: By my refusal (via STD) to return to Marlboro under the existing abusive conditions, I am *"opposing"*[172] IBM's discriminatory practice of *forcing a disabled person (me) to continue working under conditions that exacerbate their disability.* This (refusal of offering a way for me to return to work, except under the hostile/abusive environment of Dan-as-manager) is a willful failure by IBM to make a *reasonable accommodation per ADA* — or even to seriously *consider* it.
  - Of course, I've actually suspected all along that this (retaliation) was the reason for Russell's suspension of my C&A process (I just didn't know until now that it falls under the aegis of "D-R protection"). And I've protested multiple times to Russell in exactly these terms, so he cannot pretend to be unaware of the nature of my "opposition". Addendum I, Section 36; Addendum II, Section 41. His statements to the effect of "(altruistically?) waiting until you 'recover' sufficiently from your disability" are, I allege, mere/obvious illicit/false pretext (for D-R).
- Further to the preceding point (about STD-"based" D-R): Russell's additional exclusionary/isolationism tactics, involving electronic and physical denial of access (Addendum III, Sections 44–45) based on my STD status amount to further adverse job actions (actual-discrimination), and also to additional counts of ADA-abridging D-R.

*Q.E.D.*

171· *EEOC Compliance Manual*, 8-II.D.1, p. 8-11.

172· The concept/language of "opposition" here is a keyword in D-R law ("opposition clause" vs. "participation clause" of D-R laws). Another way to phrase my opposition to working under Dan in Marlboro is this (and this phraseology is often seen in the legal literature): "I refuse (via STD) to obey an order reasonably believed to be discriminatory". I've been able to avoid returning to work by (properly) invoking STD mental health leave, because that's the only way I could find to avoid being attacked/harassed/bullied. (Given my recent discovery of D-R law, though, it seems I could have avoided taking STD altogether, and simply refused to work in the discriminatory environment, while remaining on fully-active non-STD status. I haven't done that though.)

# 51 Continued Denial Of ADA Reasonable Accommodation

the earliest pleas appear to be the emails dated Jun 16 at Old Complaint, part II, App. EE, pp. 149-150

As has been discussed throughout this Complaint, I've been seeking an "ADA reasonable accommodation"[173] since "Day One", yet HR has consistently refused to pay any attention at all to my pleas. Part II, Sections 8.1, 25; Appendix X 07/01/2011 (item 11); Appendix X 07/05/2011 (item 3); etc.; etc.; etc.

I renewed my plea in an email chain with Russell Mandel. Appendix YY. By this time, I had learned more about discrimination laws (ADA and others, especially D-R), as I told Mandel (in my ADA-accommodation-specific letter of 10/05/2011 10:37 AM; and more pointedly in my bombshell D-R letter of 10/11/2011 02:13 PM).

That revelation (of my new knowledge) had an immediate visible effect. For, now that Mandel was aware I had finally learned as much about my rights as he/HR/Legal/IBM had known all along, he apparently decided I was a force that finally had to be reckoned with — because now, for the first time in all these months, I finally got some kind of response about my request for accommodation.

But it wasn't an adequate response. He stonewalled, by offering to basically "allow me to try to find my own accommodation", by seeking an internal transfer within IBM.

There was a time, early on in this saga, where a transfer (far away from Dan) would have been a viable solution. But that time had now long passed. Because by now, I knew that the cultural contagion/cancer of retaliation was utterly pervasive within IBM. So, no matter where I could transfer to, it was my reasonable opinion/fear that I would continue to be retaliated against — either as a continuation of the present Knabe/Feldman case, or as a new case at some point. For, there was obviously nobody in HR/Legal/IBM who was interested in preventing D-R.

So I countered with the only possible "reasonable accommodation" I could think of: fire the lot of wrongdoers and start over. Unsurprisingly (since Mandel himself was a key wrongdoer), that suggestion fell on deaf ears as "undue hardship for IBM". But I told Mandel I didn't understand how it could be a "hardship" for IBM to get rid of confirmed/unrepentent wrongdoers. And further, I told him that he needed to finish his C&A investigation first, before resolution of my reasonable accommodation request could be adequately resolved.

Not surprisingly (since Mandel apparently had no intention of ever completing his investigation in the first place), he clammed up again (i.e., refused to engage in meaningful/interactive dialog). So there the matter rests, in limbo (as ever), at the time of this writing.

# 52 Dan: "Theft" Of STD Benefits

Under IBM's Short-Term Disability (STD) benefit plan, an employee with less than five years' tenure is entitled to up to 13 weeks (65 days) per year of "STD-days" (a.k.a. "sick-days", "Personal-Illness-days") at full-pay (plus another 13 weeks at ⅔-pay).

173· I didn't use the phrase "ADA reasonable accommodation" initially, but that's not required under ADA law. All that's required is that the employer be given adequate notice to the employer, which clearly did happen.

As already discussed in this Complaint, I have been (and still am, at this writing) on STD leave since August 15. My original intent had been to return from STD when Russell Mandel had finished his C&A investigation, punished the wrong-doers, and created a non-hostile work environment to which I could safely return. But Mandel has continually delayed, forcing me to use up all 13 weeks of my full-pay STD-days.

What I've discovered is that Dan had "stolen" some of my full-pay STD benefits. He did this by intentionally, at some earlier date(s) unknown to me, secretly/illicitly reclassifying five of my regular work(-at-home)-days as STD-days, thereby shortening my 13 weeks of full-pay benefit to 12 weeks (and also reducing my total benefit of STD for the year from 26 to 25). Appendix ZZ.

There was absolutely no valid excuse for him to "steal" those five days, as they had been properly and clearly reported as work-at-home days:

- Thursday, June 30:
  - Part I, Appendix A.jj, p. 44–45. That weekly report mentions nothing about "STD-days" for the week of June 26 – July 3. (I took my first STD day on July 7, the day of my surgery.) Note that Dan had "not required" me to submit a weekly report for that week, presumably so he could falsify my STD records (as he did for June 30), but I produced one anyway because "I like having things on the record".
  - Part II: Appendix M.a, 06/30/2011 (p. 42), and Appendix Q, pp. 62–70 (note the typo on p. 63, regarding the email of 06/30/2011 08:13 AM [noted in Addendum II, Section 39, p. 5]). This collection of emails (together with those in the next two bullet items in this list) shows I was very active on June 30, obviously being completely productive while working-from-home.
  - Part II, Appendix R, pp. 85–86. These emails prove that I communicated to Dan clearly that I was working-at-home a full day on June 30.
  - Part II, Appendix EE, pp. 151–152. These emails prove I was working at home on June 30, and Dan knew it.
- Monday–Thursday, August 8–11:
  - Part I, Appendix A.mm, p. 74. That weekly report, stating I worked-at-home the four days August 8–11, and took a sick-day on August 12, was delivered to Dan, and he never expressed any reservations about it. Dan did give me a "suggestion" (not an "order") that I "should not" work (in his email dated 08/08/2011 10:32 AM, mentioned below), but I did anyway, and properly reported same in the weekly report. [This should-not-work suggestion of Dan's is also mentioned in Part II, Section 13, fn. 69, p. 15.]
  - Part II: Appendix Q, p. 72, emails of 08/05/2011 09:57 AM and 08/05/2011 09:58 AM; Appendix R pp. 96–101, emails of 08/04/2001 and 08/05/2001. These emails preceded the dates of August 8–11 in question, but they were also days I worked-at-home (yet Dan didn't count them as "STD-days"), and they set the stage for continuing work-at-home on August 8–11, and for the STD I did get beginning the following week (Monday, August 15). In totality, these make it very clear that I was working-at-home "for a real/serious medical/psychological rea-

son" — not "because I capriciously refused to come into the office", as Dan pretends to claim.

- Part II, Appendix R, pp. 101–103, emails of August 8–9, proving I was working-at-home, with Dan's knowledge. I explicitly stated there was no problem with my doing technical work (despite the mental disability caused by Dan's harassment. Nevertheless, Dan in his email of 08/08/2011 10:32 AM freely offered that I "should" (not "must") take as much time-off as I needed (which I then did, August 8–11), and "suggested" (not "ordered") I "should not" (not "must not") work. (In the event, I did work ["on my own time" if you will, so as to observe Dan's suggestion], because I knew exactly what work needed to be done [as agreed by Dan/me/Garth, not "my own agenda" as Dan falsely imputes], despite Dan's absurd/idiotic protestations to the contrary.) Nowhere did Dan ever say he intended to charge me with a sick/STD-day, nor did I ever request/claim one (until Friday, August 12).
- Part II, Appendix DD, p. 148. These 2 emails show Dan wanted to talk to me by phone on August 11 (though I didn't see his request until too late that evening to return the call), so he certainly knew/thought I was working that day.

Of course, the "theft" of the STD benefits amounts to only a paltry sum of money (though in the end, even that did not actually occur, because Dan backed down, and that's why I'm putting words like "theft" and "steal" in quotes; Appendix ZZ). That was not the point, obviously. The point was harassment/retaliation, pure and simple, and that much was certainly accomplished/consummated.

Amazingly, it was Dan himself who voluntarily/spontaneously/proactively brought this "thievery" to light. And, he did so in mid-October — a full four months after his original demotion of me, and two months after his syncope-inducing attack on me (proving that the retaliation campaign is still, even now, in full swing).

Dan's "theft", and its revelation, was completely unnecessary. When he was informed (by IBM Health Services; Appendix ZZ) that I was approaching my 13-week full-pay limit, he had plenty of time to un-do his altered records, to reflect the truth, thereby "correcting" his "error", and eliminating any possibility I'd ever find out about it (for, I was unaware of the database where such information was recorded). There can be only one reason Dan didn't make that "correction": he was so *proud* of what he'd done, and wanted to "rub my nose in it", to make sure it had its full harassing/retaliatory effect on me.

And: Why hadn't Russell Mandel (or someone else in HR, or Legal, or in Dan's management chain, or in Corporate Offices, all of whom I'd alerted urgently) ordered Dan to discontinue such shenanigans (especially in light of the fact that I'd just informed Mandel of my discovery of the D-R concept; Appendix ZZ, 10/11/2011 02:13 PM)? Obviously, correcting IBM's discriminatory practices was (and still is, even now) the furthest thing from IBM's collective conscience. Or rather (more likely), they *prefer* retaliation/harassment/abuse/IIED to trust/"values"/morality.

# APPENDICES — Addendum IV

## XX Jocularity/Humor Of Laziness

▶*This article by Joel Stein appeared on page 62 of the October 24, 2011, issue of Time Magazine.*◀

The Awesome Column

# Joel Stein

## Nice Work If You Can Avoid It

### In which I take a break from my idle life to defend American laziness

MANY COMMENTATORS HAVE CRITICIZED my self-obsessed columns as being narcissistic. I know because I spend several hours each day Googling my name and reading those comments. Sure, I was a lodestar for this generation's narcissism, writing about my body hair in this magazine long before people wrote about their body hair on blogs, Twitter and Facebook. But I was also forging an even more important cultural shift: laziness. Because there's no form of journalism that requires fewer interviews than writing about yourself. I know. I've looked. But not too hard.

Here are things I'm too lazy to do: fax, send mail, read questions on medical forms before answering them, talk on the phone, wash lettuce, punish my kid, wear a tie, click on a link, open an orange-juice carton using the built-in flap, press Save, go back to the car to get my reusable shopping bags after I forget them, make my own hot beverage, finish a book, wear glasses, call that guy to fix that thing, get clothes dry-cleaned, shop in a store, use the bathroom hand dryer instead of paper towels, read your entire e-mail.

**And America is following** my lead. A bunch of studies that I didn't read show that Americans' work ethic is plummeting. In 1955 about 80% of Americans said they'd keep working if they won the lottery; in 2006 that number was down to 70.3%. I'm so lazy, I can't believe anyone made the effort to ask that question. Of course I would quit, and I have the easiest job in the world now that Andy Rooney has retired. How evil do you have to be to win the lottery and then go to work and pretend you're worried about meeting a deadline? "Can I get an extra hour on this, Mike, if I, say, buy the company?"

It's not the recession that's getting us down—just hard work. Answers in 2009 to survey questions about valuing leisure over work are the same as in 2006. There's no data more recent than that, most likely because the survey takers have become too lazy. It's also not just people who think working is answering e-mails on their phone. By 2006 industrial workers were willing to lift only 69% of what they'd lift before 1991, despite the fact that those workers probably weigh much, much more. You think the Chinese are refusing to lift heavy stuff? Their motto is "This ain't heavy; this is the psychological substitute for my brother that the government didn't allow me to have."

In 1992, 80% of people under 23 wanted to eventually have a job with more responsibility; 10 years later, that number was down to 60%. You know how I know about all this? I e-mailed Jean Twenge, a psychology professor at San Diego State University and the author of *Generation Me*, and asked if she had any ideas for my column this week because I didn't want to think of one. You know how I know Twenge? She mentioned me in her book *The Narcissism Epidemic*. It's the circle of lazy narcissism. "Hakuna Matata." I'm not even sure if that's the right *Lion King* song. But I'm not going to look it up.

People like me have worked not-hard to replace the work ethic with the leisure ethic. We value innovations such as Angry Birds, *Avatar* and Facebook instead of laying down railroad track and getting to the moon. We have even invented a euphemism for laziness: *work-life balance*. Just like not so long ago, we invented a euphemism for narcissism: *Oprah*.

**Some will bemoan our nation's laziness.** Not me. And not just because bemoaning sounds like a lot of work. It's because laziness is the mark of a mature society. China is exciting right now with all that dynamic growth, but you don't want to live there with its smog, dangerous infrastructure and insistence on learning math. You want to live in Italy, where no one has worked in centuries. The French live better than we do, and the only things the French make are aspersions. Sure, you can watch your civilization go out in violent debauchery like the overly ambitious Romans did. But you're better off looking around like the British and deciding that running an empire is a lot less important than finally paying attention to improving your own cuisine. Americans were so ready for a lazy café culture that we spent the past 15 years building nothing but Starbucks.

There was no leisure culture until now because leisure sucked. Of course our grandparents liked to work. When they weren't working, they were at home with their eight children. Without television. I'd rather lift a million 69%-heavier things than do that.

Our great-grandparents worked hard so we wouldn't have to. To strive is to dishonor them. We work more hours than any other industrialized nation, and it's getting us nowhere but miserable. That's why I'm thinking about building a nationwide 30-week-work-year movement. It might also solve the unemployment problem. But there's no way I'm calling an economist to find out. ■

ILLUSTRATION BY THOMAS MUETZEL FOR TIME

# YY Email Chain: ADA Reasonable Accommodation (October 5–18)

- From: Walter Tuvell
  To: RUSSELL E MANDEL
  Cc: Kathleen Dean, Al Pfluger
  Date: 10/05/2011 10:37 AM
  Subject: Fw: STD / FYI

  I have today received a note from Dan Feldman concerning reduction of benefits under continued STD (his note is included below). ▶*The note referred to is the one included below at Appendix ZZ 10/05/2011 08:06 AM.*◀

  There's a major problem here, and it's all rooted in the ADA (as amended in 2008/9). As you know, I have requested (and continue to request) a reasonable "accommodation", under the ADA. Namely, I am unable to work under my existing work assigned conditions, under Dan and others, at Netezza (because I consider them abusive/hostile, for reasons well documented). I have many times requested/begged to be accommodated, by separating me from those conditions (see for example my email at Complaint, Part II, Appendix R, 06/28/2011 12:09 PM, pp. 83-84).

  I claim I do, indeed, satisfy the disability requirements of the ADA (I have read it, so I know). In particular, the medical problem I have has obviously been known from the beginning to be a long-term one (permanent, i.e., I can never return to work under the currently assigned conditions). Therefore my request for accommodation is a valid one under the ADA. And hence IBM is required by ADA law to provide me with such an accommodation (provided it doesn't cause "undue hardship", which IBM would have a very hard time claiming). Yet you/IBM have utterly failed/refused to do so. I have not even seen a response to my ADA accommodation request (which is separate from my C&A appeal, of course, since the ADA is state/federal law while the C&A is mere "IBM Law"). For example, if there is some process I am supposed to be following with respect to this accommodation request, I do not know what it is (I would be happy to comply with any such process, of course).

  Therefore, IBM is currently actively in violation of ADA law.

  IBM's refusal to provide me with an ADA accommodation is the very reason I am on STD. The STD was originally supposed to be a stop-gap measure, bridging me to the new situation (in an accommodating position). It is you/IBM, not me, who is responsible for my continuing STD leave, as opposed to returning to work (in an accommodating position). Therefore, if IBM does indeed reduce my STD benefits to 2/3 salary, IBM will be forcibly/unilaterally reducing my income. That is clearly an adverse employment action, and it would obviously form the basis of a constructive discharge claim (based ultimately on ADA violation).

  I assume already know all this. I want to make you aware I also know it.

I am copying Health Services on this note. To date, they have "played it straight" with the STD process, so they have no culpability insofar as I am aware. I want to make sure they are knowledgeable about the current/continuing state of affairs, and I hope they choose to continue doing their jobs professionally.

- From: RUSSELL E MANDEL
  To: Walter Tuvell
  Cc: Al Pfluger, Kathleen Dean
  Date: 10/10/2011 09:33 AM
  Subject: Re: Fw: STD / FYI

  Your manager is not going to be changed as an accommodation for a medical condition.

  If you are ready to return to work from Short Term Disability leave, however, we may be able to provide you with another accommodation. For instance, we may be able to assist you with a change in your position by helping you to possibly locate another opportunity through Global Opportunity Marketplace (GOM). If you are interested in looking for another opportunity on GOM, please let me know. Diane Adams can assist you with your search.

  Further, if there are other workplace modifications you would like to propose to help you to perform your current position, please let me know.

- From: Walter Tuvell
  To: Russell Mandel
  Cc: Kathy Dean, Al Pfluger
  Date: 10/11/2011 02:13 PM
  Subject: Re: Fw: STD / FYI

  Here's something you'll find interesting.

  I have just recently learned about "discrimination-retaliation" (I didn't know this concept existed previously, though of course every competent manager/HR person at IBM did). "Discrimination-retaliation" is what happens when an employee files a complaint (just "filing" to employer suffices) involving discrimination to an employer, and the employer retaliates. It is EQUALLY AS ILLEGAL as "actual-discrimination" (in particular, for example, it supports penalty remedies). And, very recent laws (both statutory and common) have made it much friendlier to employees. In particular, "retaliation" in this context of "discrimination-retaliation" merely means "tends to dissuade reasonable employees from pursuing their rights (e.g., filing discrimination complaints)". See http://eeoc.com/guidance/discrimination/discrimination-retaliation for the basic facts.

  Now let's review some facts of my case (these are not exhaustive, merely samples

[I'll write up details in my Addendum IV]):

1. Fritz yelled at me on Wed, Jun 8.
2. Dan demoted me on Fri, Jun 10.
3. I initiated the C&A process on Mon, Jun 13, complaining orally to Kelli-ann McCabe about age discrimination.
4. I followed that up on Wed, Jun 15 with an email to Dan Feldman, Kelli-ann and Diane Adams, also complaining about age/sex/race discrimination.
5. I was immediately/seriously retaliated upon (blackballing, etc.),precisely because I filed the complaint (beginning with the "detailed day-by-day plans for 3 weeks, on 4 new projects, on one day's notice, independently", and culminating with the "lazy scandal"/"formal warning letter").
6. As for disability, I have been on STD effective Aug 15, as you (Russell) have known all along. Yet, you've done things such as refuse to progress my C&A while I'm on STD (thereby "denying me access to investigative procedures", despite the fact that IBM policies explicitly state such procedures are available to all employees "on leave", including STD), deny reasonable accommodation (by continually telling me I must return to work under Dan, and/or work with Diane/you), and rescind various electronic and physical access privileges. [Lisa Due's "investigation" was similarly sham, as we know.] According to recent law, all these things also amount to discrimination-retaliation, on the basis of disability.
7. And, you're obviously being supported in your actions by Legal, and Corporate Officers. For, I have complained directly to them, so they cannot pretend to be unaware of the urgency, yet they've delegated to you, knowing exactly what you're doing. So they're all guilty of discrimination-retaliation too.

All the above is provably documented in my Complaint. In short: IBM is supporting discrimination-retaliation against me, knowingly (you can't tell me Legal isn't a party to this, in fact Dan told me so explicitly).

Yet, what you're telling me in your note (included here) is that you've apparently completed your investigation, and you have no intention of removing wrongdoers such as Dan and Diane (and John Metzger, and yourself, among others) from my workplace.

That is UNACCEPTABLE -- because supporting known-illegal activity is unacceptable. It is completely "reasonable" for me to demand that these wrongdoers be removed from my workplace, and the rule of law restored. For, merely "transferring" me to another location does NOT remove the threat. I fully believe that the very same people will attempt to influence the very same punishment upon me (not to mention others!) -- namely, discrimination-retaliation, for example by influencing people in the proposed new location against me. To go through a GOM would require a recommendation from Dan, and I do not believe he would give me a good recommendation. And working with Diane, as you suggest, would also be a sure-fail. Finally, it's entirely obvious that people like you, and John Metzger, and Arvind Krishna, and even Sam Palmisano, would continue to retaliate upon me in future, given half a chance. [And in any case it is not ME who must "find a new position via GOM -- it is YOU/IBM who must make the "reasonable accommodation".]

All this assumes your "investigation" is a fraud/sham. Am I wrong about this? If SO, there's an easy to prove it: Make your findings known to me. I demand, yet again, that you do so. Every day you refuse to afford me my right to the C&A process amounts to an additional count of discrimination-retaliation.

You cannot pretend, as you have in the past, that you'll afford me the C&A rights "when I return to my regular job from STD", because that will NEVER happen. For, I have a well-known (to medical practitioners) type of PERMANENT ("longer than 6 months", as the ADA defines it) disability about working with Dan and others. That fact that the disability is intermittent (only active when I'm under the influence of the abusers) is of no avail to you (according to recent ADA law).

Per your suggestion (in the included note), I have indeed proposed the ONLY reasonable workplace accommodation: Get rid of the wrongdoers, and make IBM stop breaking laws (discrimination-retaliation and all others). There is no alternative. Yet you/IBM have steadfastly stonewalled/covered-up since June.

Time is rapidly running out -- a salary decrease and "constructive dismissal" loom on the horizon. That would be the ultimate adverse job action, which would kill any remaining chance you/IBM have to Do The Right Thing.

- From: Walter Tuvell
  To: Kathleen Dean, Al Pfluger
  Date: 10/17/2011 10:53 AM
  Subject: MTR/STD?

  Did you receive the 2 MTRs my health-care-givers were supposed to fax to you on Friday?

  And, what is the status of my request for STD leave?

- From: Kathleen Dean
  To: Walter Tuvell
  Cc: Al Pfluger
  Date: 10/17/2011 11:00 AM
  Subject: Re: MTR/STD?

  Walter, I received some documentation from your treating physician last week but I have not had a moment to review them.

  Vasquea, Family Nurse Practitioner no date on IBM MTR form & Ross, Psychotherapist IBM MTR dated 10/12/201.

  I'll look at them before the end of today.

  Thank you for checking.

- From: Walter Tuvell
  To: Kathy Dean
  Cc: Al Pfluger, Russell Mandel
  Date: 10/17/2011 11:46 AM
  Subject: Re: MTR/STD?

  Kathy, thank you for the update.

  I wrote the date 10/14/2011 (last Friday) on the MTRs I gave to both of them (Victoria Vasquez, Stephanie Ross), and requested that they fax the forms to you on that date, so any deviation from that plan was just inadvertent/insubstantial/typographical error. But if you need a "clean copy", let me know, and I can re-visit them and ask them to re-do the MTRs. That would require some time for rescheduling, visits, and paperwork, but the substantive information would be the same in the end.

  As a reminder, I just want to make sure you're aware that the ADAAA (Americans with Disabilities Act Amendment Act, effective 1/1/09) requires that "episodic" disabilities (the Implementing Regulations specifically cite PTSD as an example) be evaluated for their effects during their "active" phase, without accommodation. In my case, this means that my STD request must be based on conditions that would prevail when/if I were forced to work under the control/influence of Dan Feldman (and others who have been conducting illegal discrimination-retaliation upon me). The last time I was in his presence, I fainted, due to his obviously intentional psychological attack. And there is of course every expectation that same thing would happen every time time I'm forced to work for him.

  As you already know, I have specified a "reasonable accommodation" to Russell Mandel (CC'd hereto), namely, fire Feldman and all the other people who have been perpetrating the clearly illegal discrimination-retaliation upoon me. (This is "reasonable" accommodation, because illegal activity is "unreasonable"). He has not responded to me yet.

- From: Kathy Dean
  To: Daniel Feldman, Walter Tuvell
  Date: 10/17/2011 02:10 PM
  Subject: *IBM Confidential: STD: Walter Tuvell

  Short-term Disability (STD) Certification

  Employee name: Walter Tuvell  Serial number: 0G3821

  As a result of the most recent request for the above employee:

  > Approved for STD from 10/18/2011 through 11/07/2011. (Managers please update eTOTALS)
  > Return to work is anticipated on 11/07/2011 if additional medical information (updated MTR) is not received by __ and IHS has not issued a new certification form.

Comments: IBM Nurse Case Manager needs to review MTR form with IBM Physician; Manager please inform employee of LTD process when h/she has used 13 weeks of STD.; Manager please send note to Sickacc@us.ibm.com. to obtain STD end date, include the employee's name, serial number and last day worked in the request, cc case manager (deanka@us.ibm.com)

Note to managers: Managers and employees should communicate weekly during STD absence. IBM regular employees may be eligible for STD benefits up to a maximum of 26 weeks. Employees receiving benefits from the STD Plan should apply for Long Term Disability (LTD) by the beginning of the 13th week of STD.

Note to employees: If you are approved for STD benefits, this absence will also be counted toward the annual Family and Medical Leave Act (FMLA) if eligible.

- From: Walter Tuvell
  To: Kathy Dean
  Cc: Al Pfluger, Russell Mandel
  Date: 10/17/2011 02:27 PM
  Subject: IBM & Reasonable accommodation

  I just found an interesting website dedicated to providing summaries of employment law, Garland's Digest, http://www.garlands-digest.com. At http://www.garlands-digest.com/treatise/13/1334540.html, it summarizes some cases about "reasonable accommodation". In a 1st Circuit case (which includes Massachusetts), it says: "Thus, once the employer becomes aware of the disability of an employee, he is expected to engage in a meaningful dialogue with the employee to find the best means of accommodating that disability." And in a 5th Circuit case, it says: "However, when an employer's unwillingness to engage in a good faith interactive process leads to a failure to reasonably accommodate an employee, the employer violates the ADA." In other words, the law is quite consistent in its interpretation of this aspect of the ADA. (These cases are somewhat old, but I believe they still represent good law.)

  Now recall that I begged to be removed from Dan's influence, as a "reasonable accommodation", many times. For example, on June 23 (Part II, p. 78):

> 7. Finally, this so-called "transition" is something Dan and Fritz cooked up in secret anyway, and shoved it down my throat, with no input from me whatsoever. It's not a "transition" just because Dan calls it that. It's punishment, period. Under the circumstances, how am I supposed to cope? I have made it quite clear to HR that I am nearly incapacitated now by recurrence of PTSD, just as Dan knew I would be (because we talked about it, many times). I cannot now eat (because of stomach problems caused by this anxiety), I cannot sleep (because of lack of food, and mind-spinning perseveration), I cannot concentrate (because of lack of sleep, and intrusive thoughts), and I've started seeing my psychological health-care professionals again about this problem, including psycho-medication. I have begged HR to release from the grasp of the likes of Dan, yet I'm still forced to be here, more vulnerable than ever, and tortured beyond my ability to stand it. Isn't there supposed to be some sort of policy against discrimination on the basis of disability, by forcing me to continue working with/for my tormentor (and if having debilitating PTSD isn't considered a disability, I don't know what is)? Yes, "rape" isn't too strong a word, even though it's not of the sexual kind.

Yet despite this plea and many others, IBM refused to engage in a "good faith interactive process" to accommodate me. The very first time IBM engaged in any sort of "interactive process" of accommodation was when Russell Mandel mentioned it, as recently as last week. That is far too late to be considered "good faith". Further, his suggestion that I find a way to transfer myself, without punishing law-breakers, is also not "good faith".

In other words, this is yet another proof that IBM has violated the law (in this case, the ADA, see 5th Circuit quote above).

By the way, notice that the above webpage citing Garland's digest also mentions the case of Criado v. IBM. That proves that IBM has a track record of violating ADA "reasonable accommodation". If you read that case, you'll see the court decided that the monetary punishment meted out to IBM was sufficient to forestall repeat offences. Obviously, the court was wrong.

- From: Walter Tuvell
  To: Kathy Dean
  Cc: Al Pfluger, Russell Mandel
  Date: 10/17/2011 02:31 PM
  Subject: STD

  Kathy (& Al), I have received your STD Certification, and the information note that accompanied it.

  (That note I sent you concerning Garland's Digest was sent before I received your notes.)

- From: RUSSELL E MANDEL
  To: Walter Tuvell
  Date: 10/17/2011 03:47 PM
  Subject: Re: MTR/STD?

  I absolutely did respond to you on October 10, 2011. As part of the interactive process, I stated that your manager is not going to be changed as an accommodation for a medical condition, but offered to assist you in finding a new position and/or offered to explore with you other workplace modifications you might propose to help perform your current position. I am open to continuing this interactive dialogue.

- From: Walter Tuvell
  To: RUSSELL E MANDEL
  Date: 10/17/2011 04:25 PM
  Subject: Re: MTR/STD?

  I believe you are mistaken here, presumably in an innocent/insubstantial way.

  If you will look at my note dated 10/17/2011 2:27 PM, you will see that I did indeed credit you with your response of 10/10/2011. I also stated that response was "far too late" to be considered "good faith" (and I hereby reassert that characterization).

  It looks like your "absolutely did respond" statement is in reference to my note dated 10/17/2011 11:46 AM, wherein I state you have "not responded to me yet" -- wherein I was referring to my demand that IBM fire Dan Feldman and all others who have been committing illegal discrimination-retaliation acts since June. I am correct about that, and you are mistaken: you have not responded to that demand.

  Please acknowledge. It is possible that Lotus Notes failed to deliver one or more messages to one or both of us. If that is the case, we can synchronize by cross-sending to one another all the emails we have in this thread. (This possibility of communications error is one of the reasons I've been insisting all along on recorded/on-the-record communications, not telephone or in-person.)

- From: RUSSELL E MANDEL
  To: Walter Tuvell
  Date: 10/18/2011 03:14 PM
  Subject: Re: MTR/STD?

  As I understand your position, the only potential accommodations you are willing to discuss for your return to work are firing your management team or movement to another position as you are unwilling to continue to work in any capacity with your current management team. While IBM does not consider those to be reasonable accommodations, we remain open to discussing providing you assistance with finding a new position and engaging in an interactive dialogue regarding potential rea-

sonable accommodations in your current position. These may include, but are not limited to, modifications to how work direction and other assignments are communicated to you by your manager(s) or potentially other changes in management methods. Your willingness to participate in that process with your management team, and others who can help facilitate those discussions, is essential. When you are ready to return to work, your management and I encourage you to cooperate in that process.

- From: Walter Tuvell
  To: Russell Mandel
  Date: 10/18/2011 06:05 PM
  Subject: Re: MTR/STD?

  Aren't we missing a very important component of this whole ADA negotiation, namely, the disposition of my IDR (Internal Dispute Resolution, called "C&A" at IBM)?

  You have consistently (and continue to) denied me access to IDR, based on my STD status (as you claim). Equally as consistently (and continuously) I have claimed that denial is unlawful disability discrimination (in addition to being violation of the terms of the BCG-Contract-guaranteed C&A process itself, which state explicitly that the C&A process is available to any employee "on leave" [which includes "medical/STD leave", by IBM's own language]). Namely, as I have explicitly pointed out, I am "disabled" ONLY to the extent of working with Dan/other-miscreants, but "NOT disabled" with respect to conducting my IDR/C&A. The ADA does, of course, recognize/support exactly this concept of "disablement for some activities but not others" (as is more-than-obvious to anyone anyway), so your argument has never held any water.

  The point being: If I am right about Dan/others being lawbreakers (to the extent I've complained/averred), then it is clearly "unreasonable" for me to continue working with them. Indeed, it is "unreasonable" for IBM to continue to employ those people at all. For, they plainly can't be "rehabilitated", given that the complained-of (-with-unimpeachable-documentation) activity amounts to a massive conspiracy, and there is every reason to believe/suspect that they would continue/reorganize their conspiracy to re-retaliate against me. Not to mention all the others they'd have carte blanch to attack in the same/similar ways. The ONLY way I can see to eradicate this cancer from IBM is to fire the lot. [If the question were only about me myself, an agreement might be reached, which would probably include some sort of contract (as opposed to employment-at-will). But I'm not thinking only of myself here. And in any case, for me/IBM to come to a private agreement like that would amount me to becoming a co-conspirator myself, unless certain very important/severe remedial measure were to be instituted.]

  In other words, you're trying to paint me into a corner of being "unreasonable" in my demand, but it won't work. I resist that characterization. To the contrary, I think I'm being perfectly reasonable. Instead, it is my position that you/IBM are being totally unreasonable, by (i) refusing to discuss/progress/settle my IDR, and (ii)

pretending to be blind to what may be the worst recorded case of discrimination (-retaliation) corruption in American corporate history (if I am right, which I'm pretty sure I am, until proven differently). For, those things are known-unlawful, hence a priori unreasonable.

No matter how you slice it, discussion/progression/settlement of my IDR is an absolute prerequisite to the negotiation for ADA reasonable accommodation.

I've already given you a ton of fodder (Complaint, Parts I-II plus Addenda I-III), and you've already done most/all of your investigation (given that it's been 2 whole months since I submitted my Appeal on Aug 18). And, as I mentioned, your claimed STD/ADA stall is unavailing (not to mention retaliation, as I have also previously been mentioned). You have no legitimate excuse for not discussing/progressing/resolving my C&A with me, period.

It's your move.

- From: Walter Tuvell
  To: Russell Mandel
  Date: 10/19/2011 04:20 PM
  Subject: Re: MTR/STD?

  Here's a little more gloss on the final parenthetical of my previous note (about the STD/ADA stall being retaliatory).

  Your/IBM's (long-continuing) denial (based on STD, as you yourself have self-admitted multiple times on-the-record, thank you) of BCG-contract-promised IDR is not only (i) in VIOLATION of ADA (as I've claimed all along); but is in addition (now that I understand the concept of "discrimination-retaliation") actually (ii) in RETALIATION for filing (and receiving) STD. For: "STD-based-denial-of-IDR tends to dissuade reasonable employees from pursuing their rights under STD/ADA" -- which is the very definition of illegal ADA-discrimination-retaliation.

  To be more explicit: Retaliation-for-STD is tantamount to ADA-retaliation, and thus filing/receiving STD benefits is protected by ADA, for the following reason. STD/ADA are inextricably connected/linked by reason of the fact that the "D" in "STD" and in "ADA" both mean "disability". That fact therefore provides more-than-adequate notice to employer that employee is invoking ADA protection. For, it is well-established that the employee need not invoke the actual language "ADA" to be covered by the ADA.

  In fact, we need not even reach so far as to make the STD/ADA connection: I was covered by ADA beginning already on Wed Jun 8 (the day Fritz yelled at me), by virtue of "constructive notice". Namely, any sentient employer would/should "constructively know" that any employee being yelled at (psychologically abused) by their boss would automatically be in a state of mental/emotional impairment, hence covered by ADA. Not to mention all the subsequent/ongoing blackballing/harassment/abuse/IIED/retaliation/etc. that followed thereupon.

Of course, you already knew that, being a self-advertised SME (subject matter expert) on these matters, didn't you? But then, why didn't you, as the honest-broker steward of the whole C&A process throughout the whole of IBM, extolled in such flowery poetry everywhere in the BCG/Values sacred/biblical texts, alert me to same?? I am shocked, shocked.

Be that as it may, this IDR/STD/ADA connection is another rock-solid reason that discussing/progressing/resolving my IDR/C&A is required before we can adequately progress/resolve the issue of ADA "reasonable accommodation" negotiation. For, understanding the factual environment is logically precedent to seeking remedy/accommodation.

[As usual, I don't give citations to case-law, consider that an "exercise for the reader".]

# ZZ Email Chain: “Theft” Of STD Benefits (October 5 – November 3)

- From: Daniel Feldman
  To: Walter Tuvell
  Date: 10/05/2011 08:06 AM
  Subject: STD / FYI

  I received notice today that you have reached 10 weeks of STD for the year (I think you're in week 11 now). I expect you are aware of the details of the policy, but the following is excerpted from the notice I received and I'm sending it to you in case you haven't seen it before:

  Based on our records of timecards, W TUVELL has reached 10 weeks of Short Term Disability (STD) benefits. Please ensure that the employee is aware of the following:

  - Employees hired prior to 1/1/04 may be eligible to receive continuation of their regular monthly compensation at 100% of pay for each day absent, up to a maximum of 26 weeks.

  - Employees hired on or after 1/1/04 with less than 5 years of service may be eligible to receive continuation of their regular monthly compensation for each day absent, up to a maximum of 26 weeks in a period of 12 consecutive months. For the first 13 weeks of absence, STD benefits will be paid at 100% of regular monthly compensation. After 13 weeks of absence, STD benefit level "steps down" to 66-2/3% of pay for the second 13 weeks. After completing 5 years of service, company-paid STD benefits increase to 100% of pay for 26 weeks.

- From: Daniel Feldman
  To: Walter Tuvell
  Cc: Diane Adams
  Date: 10/17/2011 02:32 PM
  Subject: LTD

  I see that your STD leave has been extended through 11/6, returning to work on 11/7.

  You should be aware of the LTD benefits, policies and processes. Please see: http://w3-01.ibm.com/hr/us/benefits/disability/ltdbenefits.html

  Please let me know if you will be applying for LTD as there is a form I need to fill out, too, when you're ready to submit your application.

  You will have completed 13 full weeks of STD at the end of the day tomorrow, 10/18.

- From: Walter Tuvell
  To: Daniel Feldman
  Date: 10/17/2011 02:37 PM
  Subject: Re: LTD

  Please re-check your 13-week calculation, I believe it is in error.

- From: Daniel Feldman
  To: Walter Tuvell
  Date: 10/17/2011 02:46 PM
  Subject: Re: LTD

  Both Accident and Sickness and I have done the calculations and concur that it is correct.

  Here is the accounting of the hours that you have been out due to STD as of the week ending Friday, 10/7:

| WEEK END | ETV | SAT | SUN | MON | TUE | WED | THUR | FRI | HRS | WEEKS |
|---|---|---|---|---|---|---|---|---|---|---|
| 2011-07-01 | 11 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 8.00 | 0.00 | 8.00 | 0.20 |
| 2011-07-08 | 11 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 8.00 | 8.00 | 16.00 | 0.40 |
| 2011-07-15 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-07-22 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| W/E 7/29/11 | | | | | | | | | | |
| W/E 8/5/11 | | | | | | | | | | |
| 2011-08-12 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-08-19 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-08-26 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-09-02 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-09-09 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-09-16 | 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 2011-09-23 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-09-30 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| 2011-10-07 11 | 0.00 | 0.00 | 8.00 | 8.00 | 8.00 | 8.00 | 8.00 | 40.00 | 1.00 |
| | 0.00 | 0.00 | 88.00 | 88.00 | 88.00 | 104.00 | 96.00 | 464.00 | 11.60 |

Total as of he week ending 10/14 = 464 + 40 = 504
Total after the two days 10/17 & 10/18 = 504 + 16 = 520 = 40 * 13

Please let me know where your calculation differs.

■ From: Walter Tuvell
To: Daniel Feldman
Date: 10/17/2011 04:10 PM
Subject: Re: LTD

I believe this calculation is in error.

My present prolonged STD began on 8/15, as you can see by checking the email you and I both received, dated 08/17/2011 09:42:04 AM. Therefore, as of the week ending Fri Oct 14, the present prolonged STD amounted to 9 weeks.

Back in July, I had my surgery on Thu Jul 7, and took off that day and the next, plus the following 2 weeks. That amounts to 2.4 weeks.

I have no idea why Fri Jun 30 is marked as an STD day (or any other kind of special day), I did not take it off. Same thing for Aug 8-12, though in that case I do remember you told me to "not work" those days, even though I was ready/willing/able to work those days. If those days are marked STD (are anything else special), I was not informed about it until now, therefore they can't be charged to me.

Altogether, 9 + 2.4 = 11.4 weeks, as of Oct 14. That leaves 1.6 weeks, which according to my calculation takes me to Wed Oct 26 as the final day of the 13-week STD benefit.

Please check my Weekly Reports, wherein I record days off (even vacation days, whether company or personal).

The only possible exception to the above I can think of is Fri Aug 12. My Weekly Report for that day says I took a "sick day". I was/am not aware whether or not a so-called "sick day" counts as an "STD" day or not. If you can point me to the policy that specifies that technicality, then I will yield to its authority concerning that day.

ADDENDUM: Can you please point me to whatever tool is available (presumably one exists online?) that contains the kind of information we're talking about here? Presumably, it also contains information concerning vacation, "personal holidays", etc.?

- From: Daniel Feldman
  To: Walter Tuvell
  Cc: Diane Adams
  Date: 10/18/2011 06:34 AM
  Subject: Re: LTD

  I recorded days when you refused to work in the office because you were not feeling well as sick days. This is per policy. Alll policy documents are readily available to you on the HR site that you are already familiar with.

  Please address any additional question about HR policy to Diane Adams.

- From: Walter Tuvell
  To: Daniel Feldman
  Cc: Diane Adams
  Date: 10/18/2011 09:16 AM
  Subject: Re: LTD

  OK, I give up. Where is the "HR policy" that says "manager can convert 'work-at-home' days to 'refuse-to-work-in-office' days, pretending the employee doesn't want to work, and record the days as STD, all without informing the employee"?.

- From: Walter Tuvell
  To: Daniel Feldman
  Cc: Diane Adams
  Date: 10/18/2011 09:41 AM
  Subject: Re: LTD

  I should have added: All previous times (prior to Jun 30) I've worked-at-home, due to illness or for any other reason, it was always treated as a regular day, not as STD (or anything else special), therefore I had not notice whatsoever that things would be different starting on Jun 30.

- From: Daniel Feldman
  To: Walter Tuvell
  Cc: Diane Adams
  Date: 10/18/2011 11:24 AM
  Subject: Re: LTD

  Please provide an itemization of the time that you believe you have taken as sick time this year.

- From: Walter Tuvell
  To: Daniel Feldman

Cc: Diane Adams
Date: 10/18/2011 12:23 PM
Subject: Re: LTD

I did exactly that yesterday, in response to the itemization you sent, check your email.

- From: Walter Tuvell
  To: Daniel Feldman
  Cc: Diane Adams
  Date: 10/19/2011 04:26 PM
  Subject: Re: LTD

  I'm awaiting your response, Dan.

  You were very clear that you relied upon a provision of "HR policy" for what you did (silently converting "work-at-home" days to "didn't-work-STD-days"), yet I couldn't find it, so I asked you for the exact citation.

  You haven't replied.  I require that citation.

- From: Daniel Feldman
  To: Walter Tuvell
  Date: 10/20/2011 07:54 AM
  Subject: Re: LTD

  Working on it; I'll be in touch.

- From: Walter Tuvell
  To: Daniel Feldman
  Cc: Russell Mandel
  Date: 10/22/2011 11:19 AM
  Subject: Re: LTD

  I've searched http://w3-01.ibm.com/hr/us/benefits/disability/shorttrmdisability.html (and its child-pages), and found some relevant information (including the "eTOTALS" database, which I hadn't known existed previously).

  I discovered for example that "STD" = "Personal Illness" = "sick day", which is defined as "unable to work because you are sick or have an accident" where "unable to work" means "unable to perform duties of your job" (and not "isn't working in-office").  I hadn't known this before (I had thought "sick day" was a separate category from "STD").  Accordingly, as I mentioned in my note dated 10/17/2011 04:10 PM, I now yield that Fri Aug 12 was indeed a "sick"="STD" day.  That means, according to my calculation, the final day of my first 13 weeks of STD coverage will occur on

Tue Oct 25.

I also found some information about "Individualized Work Schedules" (flex-time), but I found nothing specifically about "work-at-home" vs. "work-in-office". In particular, I found nothing about your claimed "HR policy" of managers being allowed to surreptitiously/falsely classify "work-at-home" days to "refused-to-work-in-office/STD" days. I worked-at-home several times before Jun 30 (for diverse reasons, including illness), and I am sure many/most people in the company have done the same, and I never heard of or experienced your claimed "HR policy" (as proof, note those days don't show up as STD days on eTOTALs either). So you still need to point me to the "HR policy" you're relying upon.

It's very important that you do so, for consider the implications if you don't. You first started enforcing your claimed "HR policy" on Jun 30, soon after I initiated my HR/C&A complaint on Jun 10 (and immediately after Lisa Due issued her insane "insufficient facts" report, on Jun 29). This act (of recording "work-at-home" days as "refused-to-work-in-office/STD" days) was done in conjunction with many other acts of blackballing/harassment/bullying/IIED, targeted at me, in retaliation for my submitting my HR/C&A complaint. Therefore, a reasonable person is justified in concluding that this, too, is an act of retaliation. [Incidentally, the retaliatory harm of the present incident is already accomplished, even if you try to "retract" it now. This is well-established law, because the already-completed act "tends to dissuade a reasonable employee from pursuing his/her protected right of filing a discrimination complaint".]

I'm CC'ing Russell Mandel on this thread. What he needs to know is that unless you can point me to your claimed "HR policy" promptly, I plan to write-up this "secret reclassification of work-at-home to refuse-to-work-in-office/STD" as another element of my HR/C&A complaint, as yet one more of your acts of retaliation (for the harassing purpose of stealing a paltry few of the 13-week-full-pay STD days from me). What's so amazing about this particular act is that you've spontaneously self-admitted it, and it's now coming to light at this very late date (long, long after IBM was notified of my complaint on Jun 10). The lateness is quite significant, because it proves that your campaign of retaliation has remained unabated all these months (called "ongoing pattern of retaliation", which speaks to Massachusetts' "continuing violation doctrine"). Plainly, there's been a lull in your retaliatory activities only because of my STD leave, but one thing is now certainly clear: Russell's proposal of my returning to work under you is a non-starter. He suggested that perhaps some sort of special arrangement might be put into place, but given that you/IBM have consistently shown a cynical willingness to completely ignore its own IBM-Law/BCG-Contract, that's absurd on its face.

All of the retaliation by you/HR/Legal is of course in the context of my original complaint about age/sex/racial discrimination, which you/HR/Legal of course are trained to know about (you even did your training in Armonk the very week you/Fritz embarked on this campaign), but regular employees like me are not. I didn't even know there existed a concept of "discrimination-retaliation" until I discovered it on my own a few weeks ago. I still don't even have a lawyer to help me as you do, though I do have some experience because I handled my previous em-

see Old Complaint, Part II, p. 36, final paragraph

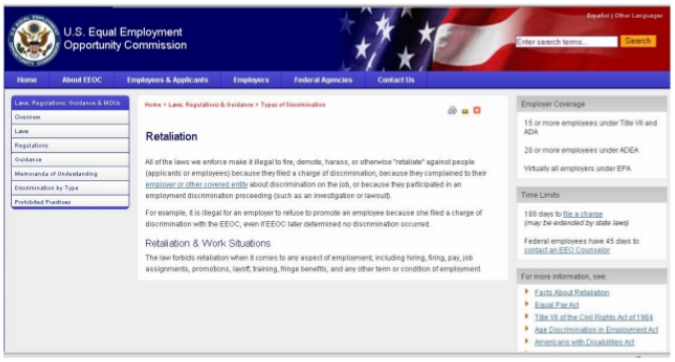
ployment legal action on a pro se basis, as you know because I told you so when you quizzed me down about it. And I also now know how much employment plaintiff's lawyers love discrimination-retaliation cases: because they pay really big bucks, and they're so "easy to prove" (especially given the mountain of documentation I've collected/submitted). See the included image below.

Incidentally, this isn't a "threat" of legal action. I'm "just saying", you know what I mean? I've been cooperating fully with all IBM official/published policies/practices/procedures all along, and I continue to do so. However, even if this were a "threat" of legal action, it would be perfectly within my rights, and it would be illegal for IBM to retaliate against me in any way for making such a "threat", because all I would be doing is "asserting/pursuing my rights (of legal action) under discrimination law".

Have a good weekend.

## Trends
## Whistleblower/Retaliation

- Distrust of business and “BP” fallout will further support whistleblower claims
- Retaliation still the litigation “favorite of the month”
- Cases are easy to prove - just need a calendar

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BLANK ROME LLP COUNSELORS AT LAW

- From: Daniel Feldman
  To: Walter Tuvell
  Cc: RUSSELL E MANDEL
  Date: 11/02/2011 01:50 PM
  Subject: Re: LTD

  I went back over your absence record and concluded the following:

  I do not see any interaction on why you were absent on Thursday, June 30. Therefore, I will count the day as worked. As to the week beginning August 8, I told you that you were not allowed to work from home so I could manage your activity, and you stated you were too sick to come to work. Therefore, your absence from the workplace from August 8 through August 11 should be counted as sick time following the same logic you used below regarding August 12. However, I am willing to count August 8 through August 11 as time worked in case you misunderstood your responsibility to follow management direction.

- From: Walter Tuvell
  To: Daniel Feldman
  Cc: Russell Mandel
  Date: 11/03/2011 07:11 AM
  Subject: Re: LTD

  Dan, everything you're saying here is demonstrably false.

  You may not have saved the documentation/evidence, but I did. Every word of it. The totality of communications we had about this subject-matter was on-the-record in email (there was nothing oral, noting that I haven't been in the office or spoken to you by phone since Wed, Aug 3), all of which has already been included in my Complaint. I'll be pulling together a concise list of pointers to the relevant emails in my Addendum IV, which I plan to finalize and submit later today to Russell Mandel (and only to him, by his request, though in any sane investigatory process he'll of course be distributing copies to you and everybody else involved).

  In short, I did indeed explicitly work-at-home those 5 days (Jun 30, Aug 8-11), and you explicitly knew it, and neither of us said anything about using sick/STD days.

  At no time have you ever ordered me not to work-at-home.

  At no time have I ever "misunderstood my responsibility to follow 'management direction'", nor indeed have I ever failed to follow "management direction" (by which you seem to be implying some kind of "insubordination", which never happened, though I've been trying to salvage my own psychological integrity from your abuse/attacks/retaliation following the allegedly-discriminatory Jun 10 demotion).

  What really happened, I argue, is that you merely pretended I needed to come into the office for some absurd "managerial direction" reason related to the blktrace work. But that's nonsense on its face. For if it were true, how can Larry Lutz (in

North Carolina) and Felix Santiago (in San Francisco) possibly be doing productive work? And, if it were true, how can it be that I did indeed finish the blktrace work, to the degree you/me/Garth had discussed it, with excellent quality and in a timely manner, despite lack of your vaunted "managerial direction"? Instead, your desire to get me into Marlboro was, I continue to claim, a transparent veil for wanting to submit me to more additional psychological abuse/torture, further reactivating my PTSD (as you know it would, since I'd talked to you about it multiple times), ultimately falsely firing me for some ridiculous/harassing/false/retaliatory reason (such as the "lazy" scandal). Which is exactly why I've been on STD for nearly 3 months, as you very well know.

By your false statements, especially your failure/refusal to provide a reference to your falsely-claimed "HR policy", I conclude that my characterization is correct, namely, you are continuing (even now, all these months later) to engage in illegal discrimination-retaliation ("D-R") and psychologically abusive/hostile workplace. And as I stated previously, the D-R damage from this STD-day brouhaha is already consummated in the legal sense (despite any/all attempts at this too-late stage to pretend it was "all a misunderstanding", and even despite lack of financial detriment) -- because your actions have already "tended to dissuade/deter a reasonable employee from asserting/pursuing their protected right to submit a discrimination complaint" (the complaint doesn't have to be an EEOC filing, even just an internal complaint suffices). The Supreme Court stated that "deterrence" standard in a sex-discrimination case (BNSF v. White, 548 U.S. 53, 2006; subsequently extended to all types of discrimination), and that's what gives teeth to the modern wave of strongly employee-friendly D-R laws/cases. Which of course you/HR/Legal have known all along because it's your job to know it and you've taken appropriate training, but ordinary employees don't know unless they discover it by themselves, like I did last month. [Fortuitously, BNSF v. White also discusses, favorably to me, "mere transfers" (like you did with Sujatha & me), and non-financially-detrimental shenanigans (like you're doing with the STD-days).]

As the lawyers say, "you can't unring that bell".