United States of America
Before the
Securities and Exchange Commission

Administrative Procedure File 3-21841
In the Matter of the Application of Ahmed Mohiddin and George Weinbaum

For Review of PCAOB Action

George Weinbaum's Brief

April 18, 2024

Cases Not Cited In Previous Submissions


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*Matter of Hall & Co., and Anthony Price*, 105-2022-09 (2022)(*Hall*) 15, 16

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*Matter of AJ Robbins CPA*, et. al. 105--2021--001 (2023) (*Robbins*) 12, 13

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Ryan, Russell, *Peekaboo Prosecution Turns 20* (2022)(*Peekaboo*). 22

*Yahoo Finance, Apple MC*, 8/25/2023 (*Apple*). 18

*Yahoo Finance, monthly Crypto Company share prices* (*YF-Crypto*) 16

What need the Securities and Exchange Commission (SEC) decide in this case? Who or what to protect: the Public Company Accounting Board (PCAOB) or the investing public? It need decide which rules: substance or form?

What is my "brief" doing in part? Discrediting the PCAOB. After 21 years, it's time. What say you SEC Commissioners?

I see no need to repeat my March 27, 2024 arguments sent to the SEC about whether or not my auditing SEC registrants presents or ever presented a threat to the investing public. I find the claim **PRESPOSTEROUS!** All the PCAOB has to support this claim is its opinion. I present **facts** and analyses to contest the PCAOB's opinion.

I raised the Statute of Limitations (SOL) on January 16, 2024. I later asked the SEC seven questions concerning it. On this basis alone, my case should be dismissed. I will quote my previous submissions. The SEC will consider what I've written or ignore it. But I think the SEC should ask: how many hours did the PCAOB spend on my case? Why? Would the PCAOB's time be better spent on disciplining the Big Four (BF)?

The PCAOB cites *Davis Accounting Group (DAG)* to support lifting my stay. Does the PCAOB claim either Mohidin or I "refused to cooperate with an investigation" by the PCAOB? Or does the PCAOB "grasp at straws" here? Would the PCAOB say Mohidin and I will "win on the merits"? I see **no** reason for the SEC to credit **anything** the PCAOB says with respect to the merits of this case. Why is its opinion better than mine? Mohidin and I are licensed CPAs **unlike** the *DAG* applicants. Did I "distinguish the cases on the facts"? According to the PCAOB, "Applicants would therefore suffer no injury if the stay is lifted because it would not 'restrict their conduct any more than it is already restricted by state and federal law'," *DAG*, 3. Does this "distinguish the cases on the facts"? Or have we more

PCAOB Humpty Dumptyism? Words mean whatever the PCAOB wants them to mean. Davis had a state court conviction arising out of his professional conduct, *DAG*, 4. Does this "distinguish the cases on the facts"? Would lifting the stay "restrict my actions", unlike Davis, who had his license suspended?

The PCAOB's "case strategy" seems to be: overwhelm me with filings. Is this sanctionable under Federal Rule 11? Is the PCAOB's "paper storm" to harass me? Citing my May 19, 2023 submission, tab 141, page 20:

> I am reminded of something I likely heard 500-1,000 times as a child: "Number One, when you have the facts on your side, scream the facts. When you have the law on your side, scream the law. When you have nothing on your side, scream louder than anyone else in the room, obfuscate the issue and abuse the other party", Irwin Weinbaum (1922-1981), my father who passed the bar in 1949. I'm sure he would say: Yes Number One, here the PCAOB is obfuscating the issue.

If I asked my father what's going on now, I'm sure he would say, "The PCAOB has advanced to the abuse the other party" stage. What say you SEC? Or will you let the PCAOB file a motion every week from now on?

I reread my April 5, 2022 submission, Tab 127, and still stand by every word of it. I see no need to repeat it here. Read my page 6 comments about Mark Dorfman's (MBD) decision, page 73. MBD cited no hearing page number did he? MBD states "it is undisputed", page 8, Decision, page 70. I dispute it. Can MBD distinguish issues of fact from opinion? I cite *Halberstam v. Welch*, page 12 and *Lacetti*, page 13.

Now some new material. "In my view, the justification for cost-benefit analysis, and the criterion for modifying it, should be pragmatic rather than foundational, and I worry that modifications designed to make it a better measure of average utility ... will simply make it more complicated and subjective", Posner, Richard in *CBA*, 332.

"Cost-benefit analysis need be 'founded' on nothing deeper or more rigorous than a showing that it has consequences that we like", 333. I never saw any PCAOB cost-benefit analysis. This should interest Commissioner Peirce (HP).

"Administrative agencies make decisions within a political structure and have important political purposes. They are agents of Congress, the president, and the people. If they are not supervised, they may regulate in a way that does not serve the public interest", *CBA*, 305. "More broadly, an agency **might serve the interests of its adminstrator, or of its bureaucracy**, or of influential citizens or groups, rather than the interests of hierarchical superiors in the political branches or the general public", my emphasis, 305. Even the PCAOB? Scandalous and impertinent!

"One technique for supervising agents (and agencies) is to require them to disclose information about their behavior. This is the political advantage of [CBA]: it forces agencies to be clear about the basis of their decisions, and this facilitates monitoring by other actors", 305. Does this apply to the PCAOB? "These metrics aren't guaranteed predictors of audit quality, PCAOB Chair Erica Williams said. 'They do provide an important window into how a firm manages its resources and conducts its audits that, with context, will empower audit committees, boards of directors and others to hold firms accountable,' she said. 'And accountability begets quality'," *Maurer*. Even for the PCAOB?

My April 17, 2023 submission, Tab 134, page 4. Read my comments about the PCAOB's "standard". I still have not seen it. Read my comments about an article MBD and Winer wrote which explains the PCAOB's actions here, page 4. The PCAOB had **no** fault in nine of my audits, page 6. What threat to the capital markets do I pose?

Read my other material in this April 17, 2023 submission and decide what the PCAOB **really** does. I never saw any PCAOB "calibration", page 7. Commissioner Crenshaw, please read about Hitor Group and decide if the PCAOB wasted time with George Stewart.

I compare my conduct to Lacetti's, pages 7-8. I say like Lacetti, the PCAOB is "simply searching for some basis" to sanction me, page 8. I liken the PCAOB to Lavrenty Beria, page 8.

I quote *BMW* on "fair notice", page 9. Have we "uniform treatment" here, page 9? I note MBD represented *Armstrong*, page 10. Is MBD showing us "doublethink"?

I provide statistics using the Priest-Klein hypothesis, page 11. "Fair notice" raised, page 13, citing *Sessions v. Dimaya*.

I compare my conduct to Melissa Koppel's pages 14-15. The PCAOB never brought a case against a CPA involving an SEC registrant with over $6.6 billion in market cap, page 15. I raise "scope insensitivity", page 16.

More on *D&T*, page 17. I quote Basil Hart here. I apply *Allen v US* to the PCAOB, page 18. Yes, I put the PCAOB "in the dock" here. See *Falstaff Brewing* on subjective and objective evidence, pages 18-20.

The PCAOB's own actions are **not** privileged, page 22. The PCAOB does not use numbers, ignoring Lord Kelvin, page 23. What is the PCAOB doing? Can the PCAOB walk away from the "stubborn things" John Adams talked about in 1770, page 23?

"Congress established the SEC to protect investors in securities markets", my May 19, 2023 submission, Tab 141, page 4 citing *Axon v. FTC*. Similarly the PCAOB. I add here **not** to provide lawyers and CPAs sinecures. I claim PCAOB hearing officers deny applicants due process rights, page 4. Clarence Thomas, concurring, attacks "deferential review

of the SEC's and FTC's decisions", page 5. Thomas uses numbers! Also separation of powers issues, pages 5-6. Agency factfinding attacked, page 6. What would at least Thomas say about my case, page 6.

Justice Gorsuch notes Michelle Cochran caused no "monetary harm to clients or investors", page 7. Who did I harm?

Selective or pretextual enforcement is attacked in *Bruen*, page 9. *Bruen* requires objective licensing standards, page 9. Not "unchanneled discretion", *Bruen*, page 9.

Citing *Throckmorton*, "there has never been a real contest in the trial or hearing of the case", page 10.

I discredit the PCAOB using probability theory, pages 10-11.

The PCAOB claims to "identify serious audit deficiencies that pose risks to investors", page 12. So why am I here?

Has the PCAOB **any** "quantitative analysis" of what puts investors at risk, page 12? I make two suggestions. I apply CBA to PCAOB enforcement actions, page 13.

What "substantive audit failure", page 13, am I accused of? What "specified rule", page 13? I question PCAOB action with ratios, page 14. "Regulators need to be mindful of the economic impact of their own actions as well", quoting the PCAOB's *2014-2018 Strategic Plan*, page 15. Why am I here then?

My car accident story and the PCAOB turning the "declension amount" on its head, pages 15-16. Is the PCAOB's pursuing this case exhibiting "careful stewardship of [its] resources", page 16? Well? Am I being treated "in a fair, impartial and consistent manner", compared to D&T's LOC, page 16? Did the PCAOB show "high standards of thoroughness and fairness", page 16, to me?

I claim the PCAOB has the burden of production (BOP) to explain my statistics, page 18. I add here, at best, the PCAOB lawyers do not understand the BOP. At worst, they are playing stupid.

I discuss *Loper Bright Enterprises*, pages 23-24. Where are the PCAOB's "objective and measurable criteria", page 20?

Is a PCAOB proceeding an "ex parte", page 21. I discuss *Lacetti*, pages 22-25. Imagine the PCAOB need rescue the BF's "platoon of Goliaths", from me, page 23. A case must make economic sense, page 23.

I discuss *US v White*, pages 25-26 and apply it to the PCAOB.

From my July 27, 2023 submission, which the PCAOB did **not** approve filing or list on page 13 of the PCAOB's *Index*. I say to the SEC: can **a party to a proceeding approve what may be filed?** Further, the **real** source of the PCAOB's problem with this submission is: **it has no response to it** since much of it is from the PCAOB's own website. I stand by every word in it.

I discuss the *Matter of Hall*, pages 5-6 and apply some ratios to my case. I quote various PCAOB statements, pages 6-11 to discredit it. The PCAOB admits to problems enforcing the rules against the BF, pages 12-13. I ask has the BF an anti-trust exemption?

I discuss E&Y's conduct in *Coke*, pages 16-17. I await the "protector of investors" acting on *Coke*.

I quote the PCAOB's *Cordovano* conduct, page 17. No "fraud by hindsight", page 18, citing *City of Phladelpha v. Fleming Companies*. *Safeco Ins. Co. of America v. Burr* cited on recklessness, pages 19-20.

*Path of the Law* cited at pages 20-21.

Richard Posner on legal education cited, page 22.

Erica Williams quoted, "Our standards will continue to be clear", page 22. Huh?

The PCAOB notes differential collection rates in *Westergard* and uses ratio analysis, pages 23-24. I apply ratio analysis to PCAOB enforcement.

I apply PCAOB auditing standards **to** the PCAOB, pages 24-26.

I quote HP on calibrating the SEC's enforcement program, pages 27-28. HP notes, "picking up the telephone to ask the SEC a question about how to comply is risky; why draw attention to yourself by asking a compliance question of an agency". Apply this to the PCAOB.

Again quoting HP, '[W]e should save our enforcement program ... for violations of a sufficiently serious nature to warrant the expense to us and to those we pursue. ... Our goal is ... to protect the capital markets", page 28. By looking at Smartheat with $4,342 in market cap? "The rules should be clear, so that individuals know in advance the actions that constitute violations in enforcing the rules the SEC should be even-handed and sensible", page 28. Compare my treatment by the PCAOB with that of the D&T LOC. Has the PCAOB Harry Truman's problem? Truman wanted "a one-armed economist". To the PCAOB, even-handed means two handed. "Following due process principles is rarely costless, comfortable, or convenient for a regulator, but doing so speaks volumes of the agency's integrity", pages 28-29. Even the PCAOB's? Does this statement explain why the PCAOB did **not** tab my July 27, 2023 submission? So I enclose it as an exhibit. In the interests of equity, the SEC might give the PCAOB, say 60 days to respond to it.

*Sessions v. Dimaya* cited at pages 29-30 on: due process, arbitrary or discriminatory law enforcement and void-for-vagueness.

*Maine Lobsterman's Association v. State of Maine Department of Natural Resources* cited on using statistics, pages 30-32. The PCAOB's claim to use economic analysis attacked, page 32. *Chevron* attacked, page 32. Agencies should "provide a reasoned explanation for the [policy] change", pages 32-33. Where is a PCAOB explanation of the policy change between D&T's LOC treatment and mine? Easy: there was **no** change! The PCAOB's policy always was: BF partners immune, other CPAs not immune. Was the PCAOB's action in my case, "arbitrary and capricious", page 33?

"The Narcotic Act does not create the offense of engaging in the business of selling the forbidden drugs, but penalizes any sale made in the absence of either of the qualifying requirements set forth. Each of the successive sales constitutes a distinct offense, however closely they may follow each other", *Blockburger*, 302. "Thus, upon the face of the statute, two distinct offenses are created. Here there was but one sale, and the question is whether, both sections being violated by the same act, the accused committed two offenses or only one", *Blockburger*, 304. "Each of the offenses created requires proof of a different element. The applicable rule is that where the same act or transaction constitutes a violation of two statutory provisions, **the test to be applied to determine whether there were two offenses or only one, is whether each provision requires proof of a fact which the other does not**", my emphasis, *Blockburger*, 304. What **fact** distinguishes my case from *D&T*? That *D&T* was settled, not adjudicated is no "fact" as contemplated by *Blockburger*. Google Schlar says *Blockburger* was cited 11,774 times by August 12, 2023. Is the **fact** distinguishing my case from *D&T*, that D&T is a BF firm?

"This case presents a question whether venue in a prosecution for using or carrying a firearm 'during and in relation to any crime of violence', in violation of 18 USC S

924(c)(1) is proper in any district where the crime of violence was committed, even if the firearm was used or carried only in a single district", *Moreno*, 276. "In pursuit of the dealer, the distributor and his henchmen drove from Texas to New Jersey with Avendano in tow. ... Rodriguez-Moreno and his codefendants were tried jointly in the [US] District Court for the District of New Jersey", *Moreno*, 277. "Several Circuits have determined that kidnapping, as defined by 18 USC S 1201 ... is a unitary crime ... and we agree with their conclusion. A kidnapping, once begun, does not end until the victim is free. It does not make sense, then, to speak of it in discrete geographic segments ... As we said ... 'where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done'," *Moreno*, 281. This is a prosecutorial discretion example.

Is the PCAOB, subject to judicial estoppel? Is it a party to my case, playing "fast and loose with" *D&T*? Would the PCAOB which "adhere[s] to the highest standards of ethical and professional conduct" do this? MBD answers this question at *Robbins*, page 82, footnote 6, *infra*, page 14.

"We consider that the rulings, interpretations and opinions of the Administrator under this Act [Fair Labor Standards], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its **consistency with earlier and later pronouncements**, and all those factors which give its power to persuade, if lacking to control", my emphasis, *Skidmore,* 140.

"Petitioners, husband and wife, stand convicted under S 145 of the Internal Revenue Code of an attempt to evade and defeat their income taxes for the year 1948. The

prosecution was based on the net worth method of proof, also in issue in three companion cases, and a number of other decisions here from the Courts of Appeals in nine circuits" *Holland*, 124. "One basic assumption in establishing guilt by this method is that most assets derive from a taxable source, and that **when that is not true the taxpayer is in a position to explain the discrepancy**", my emphasis, *Holland*, 126. Like I believe the PCAOB must distinguish *D&T* from my case. "Certainly Congress never intended to make S 41 a set of blinders which prevents the Government from looking beyond the self-serving declarations in a taxpayer's books", *Holland*, 132. Or a court from looking beyond a PCAOB HO's declarations. "When the Government rests its case solely on the approximations and circumstantial inferences of a net worth computation, the cogency of its proof depends on its effective negation of reasonable explanations by the taxpayer inconsistent with guilt", *Holland*, 135. The PCAOB offers: *D&T* was a settled case. Mine is not. So? "Any other rule would burden the Government with investigating the many possible nontaxable sources of income, each of which is as unlikely as it is difficult to disprove. ... But where relevant leads are not forthcoming, **the Government is not required to negate every possible source of nontaxable income, a matter peculiarly within the knowledge of the defendant**", my emphasis, *Holland*, 138. The PCAOB's ignoring *D&T* is "a matter peculiarly within [its] knowledge". "**Nor does this rule shift the burden of proof**. The Government must still prove every element of the offense beyond a reasonable doubt though not to a mathematical certainty. ... Once the Government has established its case, the defendant remains quiet as his peril", my emphasis, *Holland*, 138-139. Does the PCAOB ignore this?

"Moreover, as the Board has also stated, 'where the inability to pay is relevant, the person claiming it bears the burden of proving it'," *Robbins*, page 85. Yes MBD. The SC

would agree. Now, **who has the burden** of distinguishing *D&T* from my case?

"This indictment charged each of the above-named defendants below of crime in three counts. The first charged a conspiracy to conceal assets from the trustee in bankruptcy of Beaux Arts Dresses, Inc.; the second charged the corporation with concealing assets, and the defendants Todd and Mondshein with aiding and abetting in such concealment, and the third count charged the use of the mails in execution of a scheme to defraud by obtaining credit with the aid of a false financial statement", *Beaux*, 531. "At bankuptcy, it had liabilities of $67,435.25 and assets of $1,064.14", *Beaux*, 532. "A decrease in value--**more than one half in two months, after purchase of new merchandise-under the circumstances disclosed in this record is not to be believed**", my emphasis, *Beaux*, 534. Here is an unexplained asset decrease, *Holland*, has an unexplained increase.

"[B]lack applicants in the top four academic deciles are between four and ten times more likely to be admitted to Harvard than Asian applicants in those deciles", *SFFA*, page 5 footnote 1. Here the SC uses ratios. "The universities' main response to these criticisms is, essentially, 'trust us'. None of the questions recited above need answering, they say, because universities are 'owed deference' when using race to benefit some applicants but not others", *SFFA*, page 26. Is **the PCAOB owed deference** to treat BF CPAs unlike other CPAs? "But on Harvard's logic, while it gives preferences to applicants with high grades and test scores, 'that does not mean it is a "negative" to be a student with lower grades and lower test scores. *Ibid.* This understanding of the admissions process is hard to take seriously. College Admissions are zero sum", *SFFA*, page 27. The SC uses arithmetic. *SFFA* page 31 has a table, "Share of Students Admitted to Harvard by Race", classes 2009-2018. More

ratio analysis. Or only can a college Biology major believe if a college admits a fixed number of students, admitting more Blacks, does **not** mean admitting fewer non-Blacks.

> "Universities self-proclaimed righteousness does not afford them license to discriminate on the basis of race. ... We would not offer such deference in **any other context**. In employment discrimination lawsuits under Title VII of the Civil Rights Act, for example, **courts require only a minimal prima facie showing by a complainant before shifting the burden** onto the shoulders of the alleged discriminator employer", my emphasis, *SFFA*, Thomas concurring, page 27.

Is the PCAOB's investor protection claim its license to run a cartel? "And, of course, if universities wish to refute the mismatch theory, they need only release the data neccesary to test its accuracy", *SFFA*, Thomas concurring, page 41, footnote 1. Similarly, if my data contains errors, show me. *Green* burden shifting was established 51 years ago. *Green* was cited 56,577 times as of October 6, 2023 according to Google Scholar.

"The man of science in the law is not merely a bookworm. To a microscopic eye for detail he must unite an insight which tells him what details are significant", *Science*, 451. "The growth of education is an increase in the knowledge of measure. To use words familiar to logic and to science, it is a substitution of quantitative for qualitative judgments", *Science*, 456. Holmes sounds like Lord Kelvin here. "When we rule on evidence of negligence **we are ruling on a standard of conduct, a standard which we hold the parties bound to know before-hand, and which is always the same upon the same facts and not a matter dependent upon the whim of the particular jury or the eloquence of the particular advocate**", my emphasis, *Science*, 458. **BEFOREHAND!**

"SEC Rule 10b-5 implements this provision by making it unlawful to, among other things, 'make any untrue statement of a material fact or to **omit to state a material fact necessary in order to make the statements made, in light of the circumstances under**

**which they were made, not misleading**'," my emphasis, *Matrixx*, 1317. "In *Basic*, we held that this materiality requirement is satisfied when there is 'a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information available'," *Matrixx*, 1318. "'To establish liability under S 10(b) and Rule 10b-5, a private plaintiff must prove that the defendant acted with scienter, "a mental state embracing intent to deceive, manipulate, or defraud"'," *Matrixx*, 1323. Is *Matrixx* relevant to the PCAOB? I say yes.

*Hall*, released 11/3/22, cites The Crypto Company's (TCC) MC once exceeded $12 billion. TCC first traded 09/27/17, trading for 61 months at release. An average month has 21 trading days, so TCC then traded for 1,281 days. I do not know **how many minutes** TCC traded for $642 per share on 12/11/17, but assume it was half the day. Commissioner Gensler, is my assumption reasonable? Therefore on release, TCC traded for over $12 billion for about 1 / 2,562 of its trading life (1,281 / .50 = 2,562). The PCAOB citing an SEC registrant's MC in an enforcement action seemed odd. I don't recollect seeing this before. Why now? Was not stating TCC traded for over $12 billion for **less than one-thousandth of its trading life** an omission of a "material fact" which would let the SEC discipline an SEC registrant? Does the PCAOB, which "adhere[s] to the highest standards of ethical and professional conduct" ignore rules like 10b-5? Would Congress accept that? On 11/3/22, TCC had 23,950,380 shares outstanding (SO) at $0.30 per share, a $7,185,000 MC. TCC's MC was .000577 of it's peak MC, or down 99.94%. The market spoke. I think TCC was so small, the PCAOB should have "aimed its guns" at bigger targets. I take nothing the PCAOB says at face value.

> While **the cited authorities are settled cases,** they reflect the Commission's established view that officers of privately-held subsidiaries of public companies who provide fraudulent figures that are incorporated into public

> company reports filed with the Commission are subject to Rule 102(e). See Herbert Moskowitz Exchange Act Release 45609 (Mar. 21, 2002), 77 SEC Docket 481, 495-496 (**rejecting respondent's suggestion that no precedent supported liability because settled cases reflected Commission's view** that liability was appropriate in respondent's situation), my emphasis, *Initial*, page 23, footnote 66.

Did I refresh MBD's recollection, even though it was 20 years ago.? See my transcript, page 524, *M&W* On the April 6, 2004 Initial Decision date, MBD was one of Armstrong's attorneys. Is the SEC's 2004 position on settled cases relevant to the PCAOB? The SEC considers settled cases precedential value inconsistently.

> *Armstrong* is not applicable here. That matter was brought under Rule 102(e)(1), which as we have explained, involved procedures and standards different from those in a Rule 102(c)(3) proceeding. Moreover, 'in light of the unique circumstances [in that case], we ... determined, as an exercise of our equitable discretion, not to impose any suspension' pursuant to Rule 102(e)(3) **without providing any analysis or identifying the unique circumstances leading to this result**. Accordingly, *Armstong* provides no precedential guidance wth respect to the impositions of sanctions pursuant to Rule 102(e(3), my emphasis, *Pattison*, page 21, footnote 65.

Each case has "unique circumstances". So? Can the SEC's seemingly opposed *Armstrong* and *Pattison* holdings be reconciled? Yes, the SEC follows Humpty Dumpty. If the SEC's *Pattison* holding means anything, I note my case is no 102(e)(3) case as it was **not** "tried" in a Federal District Court. I "distinguished the cases on the facts"? My synthesized holding: we at the SEC claim our actions have precedential value when they support our current position. Don't you agree MBD? The PCAOB, with its high standards would **never** conduct itself this way. Would it? No judicial estoppel for the SEC.

> The Bank Secrecy Act and its implementing regulations require certain individuals to file annual reports with the federal government about their foreign bank accounts. ... Or does that person commit separate violations and incur separate $10,000 penalties for each account not properly recorded within a single report? ... On another view, penalties multiply on a per-account basis, so the same report can invite a fine of $100,000 even if the individual's foreign holdings or total net worth do not approach that amount, *Bittner*, 717.

> But because the government took the view that nonwillful penalties apply to each account not accurately or timely reported, and because Mr. Bittner's late-filed reports for 2007-2011 collectively involved 272 accounts, the government thought a fine of $2.72 million was in order. ... With those facts in mind, the question before us boils down to this: Does the BSA's $10,000 penalty for nonwillful violations accrue on a per-report or a per-account basis?, *Bittner*, 719.

"Widening our view beyond S 5314 and S 5321, we find other contextual clues pressing against the government's theory. Consider **what the government itself has told the public** about the BSA", my emphasis, *Bittner*, 721. "But this Court has long said that courts may consider the consistency of an agency's views when we weigh the persuasiveness of any interpretation it proffers in court. ... Here, the government has repeatedly issued guidance to the public at odds with the interpretation it now asks us to adopt", *Bittner*, 722. Are *Cordovano* and *D&T* guidance?

> The Secretary's regulation also points out some of the anomalies that accompany the government's per-account theory. On the government's telling, an individual with, say, three accounts who makes nonwillful errors when providing details about these accounts faces a potential penalty of $30,000. He faces that penalty no matter how slight his errors, and regardless whether his foreign holdings (or even net worth) approach the same amount. Meanwhile, a person with 300 bank accounts runs far less risk of incurring any penalty. He doesn't have to provide any detail about his accounts, just correctly disclose how many he holds, *Bittner*, 723.

Should a CPA firm auditing SEC registrants with $10 trillion or $10 million in MC get the same penalties?

> **Nor is this the only incongruity the government's theory invites. Consider someone who has a $10 million balance in a single account who nonwillfully fails to report that account. Everyone agrees he is subject to a single penalty of $10,000. Yet, under the government's theory, another person engaging in the same nonwillful conduct with respect to a dozen foreign bank accounts with an aggregate balance of $10,001 would be subject to a penalty of $120,000**, my emphasis, *Bittner*, 724.

Has *Bittner* **any** implications for the PCAOB? Justice Gorsuch uses dollars. When Congress created the PCAOB in 2002, it created two CPA firm classes: those with over 100 SEC registrants and all others. Having been a CPA since 1975, I have seen many IRS Code "technical corrections acts". I believe Congress made a drafting error. It should have separated CPA firms by SEC registrant MC. On 8/29/2023 Apple had a $2.879 trillion MC, *YF-Apple*. Is Apple's audit, .0566 (2.879 / $50.9) of total SEC registrant MC, less important than say the audits of 100 entities each with a $1 million MC? I say its 28,790X as important. In 20 years, did any PCAOB Commissioner tell Congress, "change the 100-audit rule to 1% of total SEC registrant MC"? Apple has more MC than **all audits by all non-BF firms combined**! Well? Does the PCAOB protect investors or create forms to file? The PCAOB answered this question July 28, 2023.

"Two additional features of this case make it a particularly appropriate candidate for the rule of lenity. First, the rule exists in part to protect the Due Process Clause's promise that a 'fair warning should be given to the world in language that the common world will understand what the law intends to do if a certain line is passed'. ... And the government's current theory poses a serious fair-notice problem", *Bittner*, 725.

"In a case like Mr. Bittner's, involving 5 reports and 272 accounts. that would mean a person who wilfully violates the BSA could face a $68 million fine and 1,360 years in prison. In these circumstances, the rule of lenity, not to mention a dose of common sense, favors a strict construction", *Bittner*, 725.

"'The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained'. ... The court can only consider the reasoning 'articulated by the agency itself,' and cannot consider 'post hoc rationalizations for agency

action'," *Clarke*, 16, my copy. "It is a fundamental precept of administrative law that an adminstrative agency cannot make its decision first and explain it later'," *Clarke*, 18 my copy. Is this the Queen of Hearts, "sentence first, verdict afterwards"? Or MBD's "findings"? An "'administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained'," *Clarke*, 19, my copy. Were the PCAOB's "grounds" in my case: I am no BF partner? "[A]gency decisionmaking is legitimated in part by the agency's providing adequate reasons. Especially where, as here, longstanding policies have engendered serious reliance interests", *Clarke*, page 22, my copy. Did MBD have a basis to believe if I called the PCAOB for "Cordovano Guidance", it would have responded? Or did MBD expose himself as a "de facto" member of the PCAOB's DEI here?

"Because it is often difficult to obtain direct evidence of discriminatory intent, we employ a 'burden-shifting framework" (commonly identified by reference to the [SC] case from which it derives, *McDonnell Douglas v. Green* to 'progressively sharpen the inqui-- ry into the elusive factual question of intentional discrimination", *Menaker*, page 30. "Thus the only remaining question is whether the complaint alleges circumstances that provide at least minimal support for an inference of discriminatory intent. We conclude that it does", *Menaker*, 30-31. "The District Court also failed to draw all reasonable inferences in Menaker's favor, relying instead of impermissible factual findings", *Menaker*, 31. I dispute "impartial adjudicator" MBD's findings of facts **or** law. "But once a university has promised procedural protections to employees, the disregard or abuse of those procedures may raise an inference of bias", *Menaker*, 33. Is the PCAOB "fair"? To whom? "To the contrary, he maintains that he was fired due to Hofstra's discriminatory adjudication of a harassament

complaint against him, and that this post-hoc allegation of 'unprofessional conduct' was merely pretextual", *Menaker*, 35. More of "Lewis Carroll's Queen of Hearts: 'Sentence first-verdict afterwards'," *Menaker*, 36.

"It is **a fundamental principle of administrative law** that agencies must treat like cases alike. The [SEC] recently approved the trading of two bitcoin futures funds on national exchanges but denied approval of Grayscale's bitcoin funds. ... The denial of Grayscale's proposal was arbitrary and capricious because the [SEC] failed to explain its different treatment of similar products", my emphasis, *Grayscale*, 2. "Grayscale's primary claim is that the [SEC] failed to treat like cases alike by denying the listing of Grayscale's proposed bitcoin ETF and approving two bitcoin futures ETPs", *Grayscale*, 3. "As with commodities, there are spot and futures markets for bitcoin. ... At issue in this case are bitcoin investment funds that hold either bitcoin or bitcoin futures contracts", *Grayscale*, 4. "The Grayscale Bitcoin Trust is a would-be bitcoin ETP. Grayscale currently owns 3.4 percent of outstanding bitcoins, worth tens of billions of dollars", *Grayscale*, 6. "The [APA] ... requires the reviewing court to 'hold unlawful and set aside agency action' that is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'," *Grayscale*, 7.

"Particularly when agencies articulate legal standards on a case-by-case basis, **they must justify** different results reached on similar facts 'to lend predictability and intelligibility' to agency actions, '**promote fair treatment**, and facilitate judicial review'," my emphasis, *Grayscale*, 8-9. Who has the burden here? PCAOB fair treatment? "Grayscale presented uncontroverted evidence that there is **a 99.9 percent correlation** between bitcoin's spot market and CME futures contract prices. ... Because the spot and futures

markets for bitcoin are highly related, it stands to reason that manipulation in either market will affect the price of bitcoin futures", my emphasis, *Grayscale*, 10. Enough evidence? "Bitcoin futures are derivatives of bitcoin and as long as the market is efficient, arbitrage will drive the prices together. ... The [SEC's] unexplained discounting of the obvious financial and mathematical relationship between the spot and futures markets falls short of the standard for reasoned decisionmaking", my emphasis, *Grayscale*, 14. Reading this made me wonder if anyone at the SEC knows of the IRS "substantially similar" securities concept and "wash sales".

"But Grayscale holds just 3.4 percent of outstanding bitcoin, and the [SEC] did not suggest Grayscale can dominate the price of bitcoin. In light of these economic realities, **the [SEC] should have explained why it considered the relevant comparison to be the value of Grayscale's assets as a percentage of the total value of the CME bitcoin futures market**", my emphasis, *Grayscale*, 18. Relevant comparison? "Because future inflows cannot be predicted, NYSE Arca compared the 'historical inflows' of bitcoins into Grayscale **to bitcoin's 'market capitalization'**," my emphasis, *Grayscale*, 19. Is MC relevant to PCAOB considerations? The DC Circuit might think so. What about *Hall*?

"Your case is then secretly decided by a 'hearing officer' who is a fellow company employee of the prosecutors", *Peekaboo*, 1. "You're also denied access to prior decisions where others successfully defended themselves (one of the most critical defense tools since time immemorial), although **your prosecutors and the hearing officer have unrestricted access to those same secret precedents**", my emphasis, *Peekaboo*, 2. Is the PCAOB "fair"? "And as best you can tell from public sources, no previous appeal has ever

suceeded, although many provoked the officers to impose harsher penalties than the hearing officer did", *Peekaboo*, 2. MBD justifies this, *Robbins*, page 82, footnote 6.

Does the PCAOB apply Rule 11? Why not? Rule 11 requires "a pleading, written motion or other paper ... not be presented for any improper purpose, such as to harass, ... or increase the cost of litigation".

> Originally intended to prevent market-rocking accounting scandals like Enron and WorldCom, the PCAOB has instead targeted most of its enforcement firepower at small audit firms with limited resources to fight back--often owned by foreigners or ethnic minorities. Many targeted firms audit only a few tiny public companies that typically retail investors have never even heard of much less invested in. Few board investigations expose material accounting irregularities or fraud, and fewer still involve investor losses, *Peekaboo*, 3.

The SEC gave Giugliano, *Guigliano*, page 14, a $75,000 CMP and three-year activity limitation. Marcum had **hundreds** of auditing standards violations. Giugliano was Marcum's "National Assurance Services Leader", a position apparently like D&T's LOC members. I now make you a settlement offer consistent with what the SEC might approve based on *Guigliano*. Marcum's 2022 revenues were $1,218 million, in 2017, MJF had $1.3 million. 2017's CPI was 246.524; 2022's was 296.797, *CPI*. $1.3 million x 296.797 / 246.524 = $1,565 million, rounded to $1.6 million, that's "significant digits"; $1,218 / $1.6 = 761. Three years is 1,095 days. So I will accept a penalty proportionate to Guiglano's. 1,095 / 761 = 1.44 days; $75,000 / 761 = $99. When does my 1.44 day "Undertaking" start? Remember, the PCAOB looked at nine MJF audits and had no problems with them.

Marcum got a $450,000 CMP in *Marcum* for 62 PCAOB independence violations or $7,258 each. Is that the PCAOB's "standard" for such violations? Giugliano got a $25,000 CMP or $403 each. Marcum "repeatedly violated PCAOB rules and standards over the course of four years", *Marcum*, page 1. The "PCAOB staff brought independence concerns

to the Firm's attention in 2015", *Marcum*, page 1. Why am I not treated as Guigliano? Guigliano was cited under Rule 3502, *Marcum*, page 4. "In addition, Marcum sent out thousands of conference invitations to potential investees. ... For each conference, Marcum prepared promotional books that were distributed to conference attendees", *Marcum*, page 5. Has Marcum "catastrophic" immunity too? "Giugliano did not document his call with the SEC Services Leader, or his conclusion that the conference would not impair Marcum's independence, because he did not believe that the matter required any substantial deliberation", *Marcum*, page 6. MBD complained I did not document my phone calls to Mohidin and others. So? "In early 2015, Board staff notified Marcum that the Board's Division of Registration and Inspections ('Inspections') would inspect the firm that year. In April 2015, the Board's inspection staff issued a comment advising Marcum that it appeared the Firm had failed to maintain its independence in respect to its issuer audit clients that participated in the MicroCap Conference", *Marcum*, page 8. "Indeed, Marcum failed even to verify the effectiveness of the steps it took to limit its touting of presenting companies", *Marcum*, pages 9-10. Hmm. "Giugliano knew, or was reckless in not knowing, that his conduct would directly and substantially contribute to Marcum's violations of the independence rules and standards. Therefore, he violated PCAOB Rule 3502", *Marcum*, page 13. I do **not** believe I violated any rules, nor that Mohidin was an MJF "associated person". Even if I did, compare my treatent with Giugliano's. I estimate Marcum's 2017 revenues were $550 million, MJF's were $1.3 million. Here we go again, that "old debill" arithmetic: $1.3 / $550 = .00236; $25,000 x .00236 = $59. Does the PCAOB want $59. Why not? Why didn't Ian Anderson offer me a $59 CMP?

Did MBD know of *Marcum*? He joined the PCAOB in April 2019. On page 579 of *AM-GW*, MBD asked, "Could you not have resigned as engagement partner"? My response, "I did not view these things as that serious". I add, I do not and never have believed, my independence was impaired. MBD, compare this to Guigliano.

"Through the ... [Act], Congress established the Board in the wake of a series of high-profile corporate collapses that laid bare auditor misconduct", *Proposed*, page 2. The misconduct was of 2002's Big Five. "The proposed negligence standard ... aims to shore-up a gap in the PCAOB's regulatory framework that can lead to anomalous results", *Proposed*, page 4. Was not charging D&T's LOC in *D&T* anomalous? The gap is: PCAOB coddling the BF. "[E]xperience has shown that [the threshold] prevents the Board from executing its investor-protection mandate to the fullest extent that Congress authorized in Sarbanes-Oxley", *Proposed*, page 6. How did Rule 3502, as is, stop the PCAOB from taking greater action against the BF? "The Board has not been able to charge Rule 3502 violations against the individuals that contributed to those firms' violations", *Proposed*, page 6. Give examples. The SEC sought examples in *Hatfield*, page 32. "The Board also expressed an intent to 'engage in vigorous and fair enforcement", *Proposed*, page 9. Fair? "Tis a consumation devoutly to be wished", *Hamlet* 3:1:71-72.

"We also acknowledge that the costs **may have** more impact on smaller firms", my emphasis, *Proposed*, page 25. Feature or bug? "The effect is, therefore the incremental probability of PCAOB enforcement", *Proposed*, page 26. If you follow the "cease-and-desist" SEC language, will "cease-and-desist" be new Rule 3502's **only** remedy, *Proposed*, page 28? "The proposal maintains the criteria of nexus and magnitude ... for an associated person's contribution. We believe that these requirements appropriately specify the

conduct that the Board considers to be actionable", *Proposed*, page 29. I see **no** "conduct specification" here, just more liabliity for **unspecified** conduct. My conclusion: the Board wants to increase settlement pressure on small firms and continue protecting the BF.

"Are there any data sources that could provide a quantitative estimation of the expected benefits and costs? If so, please provide the names of such sources", *Proposed*, page 32. After 20 years the PCAOB can't quantify this. Is this an "adverse party" admission? What did the PCAOB get for $15.7 million in 2022 economic and risk analysis? "Are there other regulatory alternatives preferable to the proposed amendments? If so, please explain the reasons", *Proposed*, page 33. You "opened the door". Here goes.

First, PCAOB analysis should separate BF and non-BF firm data. My example: The BF audit 97% of SEC registrants by MC. I assert, **ceteris paribus**, that's "economist talk" for whoever did *Proposed's* economic analysis, that investor risk is proportionate to SEC registrant MC. All calculation details avaiilable, a .2469 Audit Deficieny Rate (ADR); .97 x .2469 = .2395. Now, an extreme assumption: a 100% ADR for all other firms, .03 x 1.00 = .03. .2395 + .03 = .2695; .2395 / .2695 = .8887. Even with this assumption, the BF cause over 7 / 8ths of **potential** investor audit harm! Small CPA firms are: over inspected and over disciplined. Now assume the PCAOB can reduce the BF's ADR 10%. We get: .2395 x .90 = .2156; .2156 + .03 = .2456; .2456 / .2695 = .9113. Thus investors benefit is .0887, or 296% of .03. A 10% BF ADR reduction protects investors **more** than a 100% non-BF ADR reduction! Think about that SEC Commissioners.

Now adjust this estimate assuming the Little Three audit 1.5% of SEC registrants by MC. .015 x .4135 = .0062; .015 x 1 = .015. .2395 + .0062 + .015 = .2607; .2395 + .0062 = .2457; .2457 / .2607 = .9425; 1 - .9425 = .0575. Only 1 /17th of potential audit induced

investor risk comes from small firms. .2156 + .0062 + .015 = .2368; .2368 / .2607 = .9083, 1 - .9083 = .0917, .0917 / .015 = 611%. Now PCAOB, why do your enforcement personnel spend so much time with miniscule CPA firms?

Second, what I see as a **real** problem. *Lacetti* and *Melissa Koppel* brought it to my attention, i.e., E&Y and GT **weren't** charged. Do the PCAOB and large firms agree on a "scapegoat" to blame for audit deficiencies? The PCAOB is Sherlock Holmes' *Silver Blaze* "non-barking" dog. *Reverse* noted this problem. "In this Article, we seek to unveil a new phenomenon that increasingly permeates the corporate world: the reverse agency problem. To introduce this problem, we first need to introduce its more famous cousin: the agency problem. ... The reverse agency problem is a byproduct of the age of compliance", *Reverse*, page 3. "At its heart, it is a problem that arises from the rational and legitimate actions of the management and directors of firms in the face of enforcement actions", *Reverse*, page 3 footnote 3. "Rather, they are settled out of court in ... settlement agreements", *Reverse*, page 4. The PCAOB uses these. At least for the BF. "In the small number of cases that law enforcement authorities proceeded to bring charges against individual employees, the employees did not have the financial wherewithal or the psychological resources to continue the fight on their own", *Reverse*, page 5. PCAOB policy suggestion: charge a BF partner for a defective audit **only** if you also charge his firm. Tell the BF's senior partners **scapegoat liability is history**.

"Hence, corporations will be readily willing to admit to wrongdoing by their agents to put an end to the investigation and hopefully sweeten the bitter pill by receiving a reduced fine", *Reverse*, page 7. Was George Weinbaum a PCAOB scapegoat to let it do something yet protect the BF? "In contrast, **to impose personal liability, all elements must**

**be satisfied by the same individual**", my emphasis, *Reverse*, page 7. I call this a "Bank of New England" problem. PDAs "'use erodes the most elementary protections of the criminal law, by turning the prosecutor into judge and jury, thus undermining our principles of separation of powers', " *Reverse*, page 18, footnote 70, quoting Richard Epstein. That's the PCAOB.

"The Andersen case and the lessons learned in its aftermath have been regarded as a turning point in government decisions to charge corporate offenders, especially in the financial services industry", *Reverse*, page 23, footnote 97. "It is impossible to overestimate the role of agency problems in corporate law", *Reverse*, page 28. Or investors' agency problem: having the PCAOB protect them when it **really** protects the BF. "And in many agencies it is common practice first to reach a decision and then to have a special opinion-writing section compose a justfication", *Reverse*, page 45, footnote 176, quoting Stephen Breyer. Are PCAOB BF settled cases suspect? Is this what the SEC did in *Lacertti*?

Pages 12-13 of my April 5, 2022 submission cite *Halberstam v. Welch* (*HVW*). On May 18, 2023, *Twitter*, decided **9-0** cited *HVW*.

> But plaintiffs are not suing ISIS. Instead, they have brought suit against three of the largest social-media companies in the world--Facebook, Twitter ... and Google ... for allegedly aiding and abetting ISIS ... Defendants allegedly knew that ISIS was using their platforms but **failed to stop it** from doing so. Plaintiffs accordingly seek to hold Facebook, Twitter and Google liable for the terrorist attack that allegedly injured them, my emphasis, *Twitter*, page 1215.

"We granted certiarori to resolve whether Plaintiffs have adequately stated such a claim under S 2333(d)(2)", *Twitter*, page 1217. "The central question is this whether defendants' conduct constitutes 'aiding and abetting, by knowingly providing substantial assistance', such that they can be held liable for the Reina attack. ... We thus begin with

*Halberstam's* 'legal framework', when viewed in context of the common-law tradition from which it arose", *Twitter*, page 1218. "The allegations before us today are a far cry from the facts of *Halberstam*. ... We therefore must ascertain the 'basic thrust' of *Halbertam's* elements and determine how to 'adapt' its framework to the facts before us today", *Twitter*, page 1220. Each case has unique facts. So? "For example, assume that any assistance of any kind were sufficient to create liability. If that were the case, then anyone who passively watched a robbery could be said to commit aiding and abetting by failing to call the police. Yet, our legal system generally does not impose liability for mere omissions, inactions, or nonfeasance, although inactions can be culpable **in the face of some independent duty** to act", my emphasis, *Twitter*, pages 1220-1221. "For these reasons, courts have long recognized the need to cabin aiding-and-abetting liability to cases of truly culpable conduct. They have cautioned, for example, that not 'all those present at the commission of a trespass are liable as principals' merely because they 'make no opposition or manifest no disapprobation of the wrongful' acts of another", *Twitter*, page 1221. I disapproved of Mohidin's acts. So? Even if I hadn't, so?

"Put another way, overly broad liablity would allow for 'one person to be made a trespasser and even a felon against his or her consent, and by the mere rashness or precipiitancy or overheated zeal of another'", *Twitter*, page 1221. "In other words, the defendant has to take some 'affirmative act' with the intent of facilitatating the offense's conduct", *Twitter*, page 1221. "And others have suggested that 'inaction cannot create liability as an aider and abetter' **absent a duty** to act", my emphasis, *Twitter*, page 1222. What duty? "Plaintiffs never allege that, after defendants established their platforms, they gave ISIS any special treatment or words of encouragement", *Twitter*, page 1226. I told

Mohidin to shut up! "But as noted above, both tort and criminal law have long been leery of imposing aiding-and-abetting liability for mere passive nonfeasance", *Twitter*, page 1227. *HVW* "'has been widely recognized as the leading case regarding Federal civil aiding and abettting and conspiracy liability ... provides the proper legal framework for how such liability should function in the context of chapter 113B of title 18, [US] Code', *Twitter*, footnote 6. If the reason is the same, the rule is the same. I aided and abetted nothing.

Relief sought: motion denied, case dismissed.

Very truly yours,

[redacted]

George Weinbaum

## CERTIFICATE OF SERVICE

I, George Weinbaum certify that today, April 18, 2024, I mailed three copies of my April 18, 2024 brief in Admin Proc. File 3-21841 to you. I also filed the response by e-mail to https:www.sec.gov/eFAP and feigherym@pcaob.org, cappoliij@pcaob.org. delatorrel@pcaob.org and sisulij@pcaob.org. I also mailed copies to each of them.

The brief is 29 pages long including an index to authorities and other items cited. The word count including the front tables and identifiers is 8,665 but since it is less than 30 pages is acceptable.

[redacted]

George Weinbaum