

**Joseph HILL vs. THE
GOVERNMENT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS; Carlos S. Camacho,
individually and as Governor of
the Commonwealth, Herman Q.
Guerrero, individually and in his
capacity as Chief Administrative
Officer of the Commonwealth;
Richard I. Lassman, individually
and as Attorney General of the
Commonwealth, and Does 1, 2
and 3**

**Civil Action No. 82-0077
District Court NMI**

Decided February 21, 1984

**1. Civil Procedure - Summary
Judgment**

Summary judgment is appropriate only if it is demonstrated that there exists no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

**2. Civil Procedure - Summary
Judgment**

On a motion for summary judgment, the Court must construe the pleadings and other record evidence and its attendant inferences most favorably to the non-moving party. Fed. R. Civ. P. 56.

**3. Civil Procedure - Summary
Judgment**

On a motion for summary judgment a genuine factual issue may exist only if a viable legal theory would entitle plaintiffs to judgment if they prove their asserted versions of the facts. Fed. R. Civ. P. 56.

**4. Defamation & Slander - Public
Officials**

The Chief Administrative Officer who oversees day-to-day operations of the executive branch and exercises broad discretion in daily government matters is properly considered a "superior officer" to whom the defense of absolute privilege should apply in an action brought against him for defamation. Rest. Torts 2d, §591.

**5. Public Officers & Employees -
Immunity**

The absolute privilege defense to a defamation claim and official immunity are separate and distinct doctrines.

**6. Public Officers & Employees -
Immunity**

For executive officials in general qualified immunity represents the norm and absolute immunity is the exception; within the executive branch, absolute immunity has been recognized only for prosecutors and officers exercising adjudicative functions.

**7. Public Officers & Employees -
Immunity - Absolute**

The burden of justifying absolute immunity rests on the official asserting the claim.

**8. Public Officers & Employees -
Immunity - Qualified**

The CNMI Chief Administrative Officer is entitled to a qualified immunity only for actions taken within the scope of his official authority.

**9. Public Officers & Employees -
Immunity - Qualified**

Government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established legal rights of which a reasonable person would have known.

10. Public Officers & Employees - Immunity - Qualified

Summary judgment based upon a qualified immunity defense would be denied government official where the law of interference with contract was well established and clearly set forth in the Restatement and a reasonable person would have known that the CNMI Chief Administrative Officer's alleged actions with regard to plaintiff's employment contract would violate plaintiff's rights to contract.

11. Civil Procedure - Pleadings

In an action under the federal civil rights act, the failure to specifically cite the statutory provision conferring jurisdiction is not fatal. 42 U.S.C. §1983.

12. Constitutional Law - Due Process

A successful assertion of a due process claim under the federal civil rights statute requires a showing that the government deprived plaintiff of a constitutionally protected liberty or property interest without notice and an opportunity to be heard. 42 U.S.C. §1983.

13. Constitutional Law - Due Process - Property Interests

Whether the plaintiff had a valid claim of entitlement sufficient to rise to a protectible property interest under the constitution depends on the existing rules and the understanding with which he entered into the contract.

14. Public Officers & Employees - Immunity - Qualified

The CNMI Chief Administrative Officer is entitled to a qualified immunity on constitutional claims brought under the Civil Rights Act. 42 U.S.C. §1983.

15. Constitutional Law - Due Process - Liberty Interests

A person's liberty interest in the employment context is an independently protected interest, separate from one's property right to continued employment.

16. Constitutional Law - Due Process

When a termination or a decision not to rehire a government employee is accompanied by public charges which affects one's reputation or standing in the community so as to foreclose the employee from taking advantage of available job opportunities, due process interests are implicated which require that a person be given notice and an opportunity to clear his or her name. U.S. Const., Amend. 14.

17. Constitutional Law - Due Process

To trigger due process protection when a decision not to rehire a government employee is accompanied by a public charge, the allegation must seriously damage the employee's standing in the community or impose a stigma or other disability foreclosing his or her freedom to take advantage of other employment opportunity.

18. Constitutional Law - Due Process

To trigger due process protection when a decision not to rehire a government employee is accompanied by a public charge, the charge must be so serious that it belittles his worth and dignity as an individual and, as a consequence, is likely to have severe repercussions outside of professional life. U.S. Const., Amend. 14.

19. Constitutional Law - Due Process

Chief Administrative Officer's statement to the press in connection with the veto of plaintiff's contract that plaintiff's "handling of labor cases in general had been poor," was insufficient to implicate constitutional interests. U.S. Const., Amend. 14.

20. Constitutional Law - Due Process - Liberty Interests

Charges of incompetence alone do not rise to constitutional infringement of liberty interests. U.S. Const., Amend. 14.

FILED
Clerk
District Court

FEB 23 1984

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands

By *[Signature]*

JOSEPH HILL,) CIVIL ACTION NO. 82-0077

Plaintiff,)

vs.)

THE GOVERNMENT OF THE)
COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS; CARLOS S.)
CAMACHO, individually and as)
GOVERNOR OF THE COMMONWEALTH;)
HERMAN Q. GUERRERO, individ-)
ually and in his capacity as)
CHIEF ADMINISTRATIVE OFFICER)
OF THE COMMONWEALTH; RICHARD)
I. LASSMAN, individually and)
as ATTORNEY GENERAL OF THE)
COMMONWEALTH; and DOES 1, 2)
and 3,)

Defendants.)

DECISION

FACTS

For the purposes of this motion, plaintiff Joseph Hill's allegations are considered undisputed. Hill was employed by the Commonwealth of the Northern Mariana Islands (CNMI) as an Assistant Attorney General from March 4, 1980 until March 3, 1981. On or about March 5, 1981, the Attorney General, Richard I. Lassman, entered into an oral employment agreement with Hill whereby Hill would continue in his capacity as Assistant Attorney General for an additional period of one year. On or about May 4, 1981, Hill and Lassman signed a written contract formalizing the oral agreement extending Hill's employment through March 3, 1982.

1 For all times relevant to this action, the defendant
2 Herman Q. Guerrero was the CNMI Chief Administrative Officer
3 (CAO). As such, his duties included advising and assisting the
4 Governor and exercising supervisory authority over personnel
5 matters.

6 Sometime before May, 1981, Hill, pursuant to his
7 duties, acted as legal counsel to the Chief of Labor. In one
8 particular labor hearing, at which the Chief of Labor sat as the
9 hearing officer, Guerrero represented his sister-in-law, an
10 employer accused of underpaying her domestic help. The Chief of
11 Labor ruled against Guerrero's sister-in-law and entered an order
12 requiring that she pay back wages due the employee. When the
13 order was not complied with, Hill filed an enforcement petition
14 in the Commonwealth Trial Court. On May 1, 1981, upon learning
15 of the petition, Guerrero met with Hill and the Chief of Labor
16 and demanded that the petition be withdrawn and the order set
17 aside. Should this not be done, Guerrero threatened to "review
18 and reconsider" the employment contracts of Hill and the Chief of
19 Labor. The petition was not withdrawn. On May 4, 1981, on the
20 advice of Guerrero, Governor Camacho disapproved Hill's contract
21 extension.

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1 Comment c to § 591 reads:

2 c. All of the state courts that have
3 considered the question have agreed that
4 the absolute privilege stated in Clause (b)
5 protects the superior officers of the state
6 governments, including at least the governor,
7 the attorney-general or the heads of state
8 departments whose rank is the equivalent of
 cabinet rank in the Federal Government. A
 good number of the States have gone further,
 and have extended the absolute privilege to
 state officers of various ranks below that
 of cabinet level.

9 The absolute privilege doctrine has been given broad application
10 by the courts of many jurisdiction. See e.g. Barr v. Mateo,
11 supra (privilege extended to Acting Director of Office of Rent
12 Stabilization); Saroyan v. Burkett, 371 P.2d 293, 21 Cal.Rptr.
13 557 (Cal. 1962) (privilege extended to Superintendent of Banks);
14 Verna v. Kleinbach, 427 P.2d 403 (Alaska 1967) (privilege
15 extended to civilian personnel officer of United States Army);
16 Grande v. State, 115 Ariz. 394, 565 P.2d 900 (1977) (privilege
17 extended to officials of state Tax Commission); Shearer v.
18 Lambert, 274 Ore. 449, 547 P.2d 98 (1976) (privilege extended to
19 head of department of university); Sidor v. Public Disclosure
20 Commission, 25 Wash.App. 127, 607 P.2d 859 (1980) (privilege
21 extended to members of election commission).

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1 [4] The CAO oversees "day-to-day operations of the
2 Executive Branch."⁽¹⁾ He provides "consultative, advisory and
3 various administrative services to the Governor... and at the
4 direction of the Governor will direct immediate execution of
5 programs and performs other duties as may be delegated by... the
6 Governor."⁽²⁾ In addition the CAO has had, from time to time,
7 extensive authority over personnel matters.⁽³⁾ It is readily
8 apparent that the CAO exercises broad discretion in daily govern-
9 ment matters and is properly considered a "superior officer" to
10 whom the absolute privilege defense should apply. Accordingly,
11 Guerrero's summary judgment as to Count IV is granted.

12 Count III of Hill's complaint requires more in-depth
13 consideration. Paragraph 36 reads in pertinent part:

14 "Commencing on or about May 4, 1981,
15 Defendant Guerrero individually and
16 in conspiracy with others, maliciously,
17 and with wilful intent to injure Plain-
18 tiff, conspired with the other defendants...
19 to cause Plaintiff's discharge from his
20 employment... by corruptly and without
legal cause or justification, using his
official position as CAO, to interfere
with and to cause Defendant Governor to
unjustly and unlawfully interfere with
Plaintiff's employment relationship and
contract...."

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22 (1) Executive Order No. 2, 1 Commonwealth Register 2 (1980)

23 (2) Exhibit D attached to Guerrero's Declaration in Support of
24 Summary Judgment.

25 (3) Memorandum of Attorney General concerning Personnel Services
26 Contracts, Exhibit E attached to Guerrero's Declaration in
Support of Summary Judgment.

1 Thus, Hill's complaint states a claim of interference with
2 contract and interference with prospective contractual rela-
3 tions.⁽⁴⁾

4 Guerrero asks this Court to read Izuka, Barr and § 591
5 of the Restatement as extending to him an absolute immunity from
6 civil liability for official acts performed within the outer
7 perimeters of his authority. Guerrero confuses the "absolute
8 privilege" defense to defamation with the doctrine of "official
9 immunity."

10 [5] Absolute privilege and official immunity are so inter-
11 woven, the distinction between the two is often blurred if not
12 wholly unseen. Traditionally, absolute privilege has been avail-
13 able as an affirmative defense to allegations of defamation. W.
14 Prosser, Law of Torts, § 114 (1971) (Prosser). Like other
15 privilege defenses, such as self-defense and protection of
16 property, absolute privilege in defamation law rests on the
17 theory that conduct, otherwise actionable, escapes liability
18 because the defendant is acting in furtherance of some interest
19 of social importance. Such interests are so valuable that they
20 are entitled to protection even at the expense of uncompensated
21 harm to plaintiff's reputation. The privilege, however, has been
22 limited to those few situations where there is an obvious policy
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26 ⁽⁴⁾ See Restatement § 766 and § 766 B.

1 in favor of permitting complete freedom of expression. Execu-
2 tive communication is recognized as one such interest. The need
3 for free-flowing dialogue, comment and criticism, unhampered by
4 frivolous lawsuits is considered so essential to an open govern-
5 ment as to be paramount to the interest in compensating resulting
6 defamations.

7 The doctrine of official immunity on the other hand
8 protects an official from liability for actions taken within the
9 scope of his or her official authority. Civil Actions Against
10 State Government § 6.3 (Shepard's-McGraw/Hill 1982)("Shepard's").
11 The doctrine acts as a substantive limitation on an official's
12 personal liability for damages. While the absolute privilege
13 doctrine has been developing in this country for nearly a
14 century, the doctrine of official immunity, in its present form,
15 has only been in existence for twenty-five years.⁽⁵⁾ Like
16 absolute privilege, the official immunity doctrine attempts to
17 balance important competing interests. The balances are struck
18 between compensating the injury of the plaintiff and free-flow of
19 dialogue (absolute privilege) and between compensation and the

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21 (5) A similar doctrine was developed under English jurisprudence
22 which shielded officials from personal liability as they were
23 acting pursuant to royal command and the King was incapable of
24 authorizing an illegal act. In 19th century American jurispru-
25 dence public employees generally had been held amenable to suit
26 and liable for injuries caused by their acts or omissions. It
is only during the last quarter century that the developing law
has moved toward increased immunity for public officials. See
Shepard's, § 6.2; K. Davis, Administrative Law Text § 26.01
(3rd ed. 1972).

1 need to protect the public officials from undue interference with
2 their duties (official immunity). The major difference between
3 the two doctrines, and of critical importance here, is the degree
4 of the privilege or immunity afforded executive officials.

5 The privilege in defamation is absolute. So long as
6 the official is acting within the outer perimeter of his or her
7 authority, the defense will bar liability, notwithstanding the
8 existence of improper motive or malice. Barr v. Mateo, supra.
9 For officials seeking immunity for their alleged wrongful
10 actions, a qualified or good-faith immunity represents the norm.
11 Harlow v. Fitzgerald, ___ U.S. ___, 102 S.Ct. 2727, 2733, 73
12 L.Ed.2d 396, 403 (1982). The Supreme Court therein stated its
13 belief that a qualified immunity allows the requisite protection
14 while recognizing the importance of an available damage remedy to
15 protect the rights of citizens. While the difference between the
16 two doctrines appears contradictory, the Court notes two bases on
17 which it can be supported.

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1 First, it must be remembered that each doctrine has
2 developed under independent branches of the common law. It is
3 possible that there has not been a case (of precedential weight
4 to this Court) which addressed the differences.⁽⁶⁾ Alterna-
5 tively, the difference can be attributed to basic principles of
6 the American democratic system. Our system generally affords
7 greater protection to speech than it does to action. Speech and
8 the free-flow of information has consistently been accorded great
9 weight. Conduct, on the other hand, although often extensions of
10 speech have been more readily circumscribed because of their
11 inherent potential for interference with the rights of others.
12 See e.g. United States v. O'Brien, 391 U.S. 367, 98 S.Ct. 1673,
13 20 L.Ed.2d 672 (1968)(court more willing to balance "symbolic
14 speech" with other government interests while very hesitant to
15 do so with "pure speech"). See also W. Lockhart, Y. Kamisar, J.
16 Choper, Constitutional Law, p. 1108 (5th Ed. 1980), quoting
17 Emerson, The System of Freedom of Expression 84-90 (1970).
18 Similarly, the law is more willing to afford greater protection

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22 (6) One authority has expressed his displeasure with the absolute
23 privilege approach and feels that a qualified privilege
24 strikes the better balance. Prosser, § 114, p. 784. This
25 Court agrees with that approach and would reconcile any
26 conflict by disallowing an absolute privilege defense in favor
of qualified privilege in defamation cases. However, the CNMI
has adopted the Restatement as the rule of decision in its
courts (1 TTC § 103) and this Court will defer to the
Legislature for any changes perceived as necessary.

1 to free-flow of speech between government officials and allow
2 absolute protection⁽⁷⁾ whereas the balance is struck more in favor
3 of compensation where actions create the injury. Thus, the
4 difference, although appearing contradictory, and possibly
5 undesirable, is not irrational.⁽⁸⁾

6 [6] What immunity then may Guerrero assert in this action?
7 As noted above, for executive officials in general, "qualified
8 immunity represents the norm." Harlow v. Fitzgerald, *supra*, 102
9 S.Ct. 2733. Absolute immunity is the exception and, within the
10 Executive Branch, has been recognized only for prosecutors and
11 officers exercising adjudicative functions. Id. In Nixon v.
12 Fitzgerald, ___ U.S. ___, 102 S.Ct. 2690, 73 L.Ed.2d 349, the
13 Supreme Court extended, for the first time, absolute immunity to
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16 (7) Members of Congress, for example, are granted the privilege
under the Constitution. Article I, Section 6.

17 (8) Guerrero would have this Court read Barr, Izuka and § 591 as
18 extending the absolute privilege to conduct as well as state-
19 ments. This position is not persuasive. Harlow v.
20 Fitzgerald, *supra*, specifically sets forth the applicable
21 standard for alleged statutory and Constitution violations as
one of qualified immunity. As for common law actions, the
22 cited cases concern alleged defamatory statements and speak in
23 terms of absolute privilege, not immunity. Barr states its
24 holding in the following manner:

[We hold that petitioner's plea of absolute
privilege in defense of the alleged libel
published at his direction must be sustained.

25 (emphasis added). 79 S.Ct. at 1341. Izuka also concerns
26 defamation and bases its holding on Barr and § 591. Accord-
ingly, those two cases are considered by this Court to be
limited to their facts.

1 the President of the United States, relying on a separation of
2 powers analysis. However, in the companion case, Harlow v.
3 Fitzgerald, supra, decided on the same day on the same facts, the
4 Court rejected the argument that the absolute immunity afforded
5 the President extended to his closest aides and advisors; such
6 individuals, the Court held, were only entitled to a qualified
7 immunity.

8 [7-8] In reviewing Guerrero's claim of absolute immunity, the
9 Court notes two general pronouncements of the Supreme Court. The
10 burden of justifying absolute immunity rests on the official
11 asserting the claim. Harlow, 102 S.Ct. at 2736. Guerrero
12 asserts absolute immunity as necessary to protect his unhampered
13 action as a high-ranking official. However, the Supreme Court
14 has cautioned that "the greater power of [high] officials affords
15 a greater potential for a regime of lawless conduct." Butz v.
16 Economou, 98 S.Ct. at 2910. Guerrero has not convinced this
17 Court that an absolute immunity is necessary to ensure the
18 efficient and effective operations of the Commonwealth govern-
19 ment. The Court believes that a qualified immunity sufficiently
20 protects the CAO while adequately preserving the rights of the
21 citizens.

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1 [9] The final point to address regarding immunity is the
2 standard of review on a motion for summary judgment. The
3 original standard for qualified immunity was developed in Scheuer
4 v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)
5 wherein a two-part test was established. A claim of qualified
6 immunity would be rejected if either the official knew or should
7 have known that his or her actions were unlawful or if the
8 official took the action with malicious intent. This test gave
9 the Supreme Court some trouble however in that any allegation of
10 malice which had only minimal support would survive a summary
11 judgment motion and subject officials to potentially lengthy
12 trials thus bringing about the evils sought to be prevented by
13 the immunity doctrine. Therefore, in Harlow v. Fitzgerald,
14 supra, the Court established a modified test eliminating the
15 subjective part of the Scheuer test. Under the modified test,
16 government officials performing discretionary functions are
17 shielded from liability for civil damages insofar as their
18 conduct does not violate clearly established legal rights of
19 which a reasonable person would have known. 102 S.Ct. at 2738.
20 In other words, if the actions are objectively reasonable,
21 immunity attaches. If the law was clearly established, the
22 immunity defense should fail since a reasonably competent public
23 official should know the law governing his conduct. Id. at 2739.
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1 [10] Here, the law of interference with contract is well
2 established and clearly set forth in the Restatement which has
3 been adopted by the CNMI. The Court is of the opinion that a
4 reasonable person would have known that Guerrero's alleged
5 actions would violate Hill's rights to contract. Therefore,
6 Guerrero's immunity defense fails and his motion for summary
7 judgment on this issue is denied.

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9 DUE PROCESS CLAIM

10 [11] Paragraph 38 of Hill's complaint reads:

11 As a result of said malicious
12 and wrongful acts of Defendants,
13 Plaintiff was forced from employment
14 with the Attorney General's Office
15 and lost his title and position of
16 Assistant Attorney General and Regis-
17 trar of Corporations and subjected
18 to a deprivation of his civil right
19 to contract as secured by the United
20 States Constitution and laws, and
21 Plaintiff was unable to procure
22 other employment in his usual voca-
23 tion at a salary level or with the
24 prestige of his employment with the
25 Attorney Generals [sic] Office, and
26 Plaintiff was forced to accept
employment during the period in
question at a lower salary.

21 Liberally reading these allegations, it is apparent that Hill is
22 seeking monetary damages for alleged deprivations, without due
23 process, of constitutionally protected interests. The appro-

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1 priate claim, therefore, lies in an action pursuant to 42 U.S.C.
2 § 1983. (9) Although the pleadings are inartful, the failure
3 to specifically cite § 1983 is not fatal. In Aguirre v.
4 Automotive Teamsters, 663 F.2d 108 (9th Cir. 1980), the Ninth
5 Circuit panel stated:

6 The rule in this circuit is clear:
7 "If facts giving the court jurisd-
8 iction are set forth in the com-
9 plaint, the provision conferring
10 jurisdiction need not be specifi-
11 cally pleaded." (citing Williams
v. U.S., 405 F.2d 951 (9th Cir.
1969), and Bowers v. Campbell,
505 F.2d 1155, 1157 n.2 (9th Cir.
1974)

12 In the cited opinion of Bowers it was held that where plaintiff
13 alleged all the facts required to state a claim under section
14 1981, "[s]he was not required specifically to plead the statutory
15 provision conferring jurisdiction." 505 F.2d 1157, n.2. This
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21 (9) The Supreme Court has held that a direct cause of action under
22 the Fourth Amendment, in appropriate circumstances, may be
23 implied. Bivens v. Six Unknown Named Agents of Federal Bureau
of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619
24 (1971). While the Ninth Circuit has expressed a willingness
25 to extend the Bivens rationale to other Amendments, Jacobson
v. Tahoe Regional Planning Agency, *supra*; Bennett v. Campbell,
26 564 F.2d 329 (9th Cir. 1974), it has expressly refused to
apply Bivens to the Fourteenth Amendment where § 1983 is
applicable. Molina v. Richardson, 578 F.2d 846 (9th Cir.
1978); Ward v. Caulk, 650 F.2d 1144 (9th Cir. 1981).

1 Court, then, will address Hill's claims as if properly brought
2 under § 1983.⁽¹⁰⁾

3 [2] A successful assertion of a due process claim under
4 § 1983⁽¹¹⁾ requires a showing that the government deprived plain-
5 tiff of a constitutionally protected liberty or property interest
6 without notice and an opportunity to be heard. The Court ad-
7 dresses first the property claim.

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10 (10) The Court feels it important to make note of the inartfulness
11 of Hill's pleadings on his constitutional claim. The allega-
12 tions are mere conclusory statements demonstrating a "shot-
13 gun" approach to pleading wherein the plaintiff leaves the
14 Court with the task of precipitating out specific claims of
15 constitutional magnitude. However, the federal rules require
16 only a short and plain statement of the facts putting the
17 defendant on notice as to plaintiff's claim and the ground on
18 which it rests. Conley v. Gibson, 355 U.S. 41, 47-48, 78
S.Ct. 99, 103, 2 L.Ed.2d 80, 85 (1957). In his reply memo-
19 randum in support of his motion, Guerrero addresses Hill's
20 constitutional claim evidencing an awareness of the claim and
21 a willingness to defend on the merits. Guerrero has made no
22 motion to dismiss, rather he has moved for summary judgment.
23 Therefore, the Court feels that the pleading requirements
24 have been met or, at a minimum, have been conceded to by
25 Guerrero.

19 (11) § 1983 reads:

20 "Every person who, under color of any statute, ordi-
21 nance, regulation, custom, or usage, of any State or Terri-
22 tory or the District of Columbia, subjects, or causes to be
23 subjected, any citizen of the United States or other person
24 within the jurisdiction thereof to the deprivation of any
25 rights, privileges, or immunities secured by the Constitu-
26 tion and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding
for redress. For the purposes of this section, any Act of
Congress applicable exclusively to the District of Columbia
shall be considered to be a statute of the District of
Columbia."

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Hill asserts that Guerrero's actions unconstitutionally deprived him of his employment rights under the second year contract. Guerrero cites Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 22 L.Ed.2d 548 (1972) to support his position that Hill held no property interest recognized or protected by the Constitution.

Guerrero correctly cites Roth as a leading statement by the Supreme Court on the property interests protected by due process. The Court discussed the parameters of such interests:

The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. These interests--property interests--may take many forms.

. . .

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

. . .

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

92 S.Ct. at 2708-2709.

1 [3] Hill signed a contract which was also endorsed by the
2 Attorney General, the Personnel Officer and the Finance Officer
3 but was subsequently disapproved by the Governor. Whether Hill
4 had a valid claim of entitlement depends on "the existing rules
5 and understandings" under which he entered into the contract.
6 For example, did Lassman have authority to bind the CNMI? Did
7 the Governor have the authority to disapprove the contract? If
8 so, was Hill aware of this or should he have been so aware? The
9 record on this issue is lean, leaving many questions of fact un-
10 answered. The Court is unable at this time to conclusively
11 determine that Guerrero must prevail as a matter of law and
12 accordingly denies the motion on this issue. (12)

13 Hill also raises a claim based on infringement of his
14 liberty interests. Guerrero relies on Paul v. Davis, 424 U.S.
15 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) to support his conten-
16 tion that any defamation under the facts as alleged would not
17 constitute an infringement of any recognized liberty interest;
18 however, Guerrero is mistaken in his interpretation. While Paul
19 does hold that a defamation alone does not implicate due process
20 liberty interests, it does not erode the Court's position stated
21 in Roth that a defamatory charge coupled with a tangible loss may
22 infringe upon due process interests. Stretten v. Wadsworth
23 Hospital, 537 F.2d 361 (9th Cir. 1976).

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25 (12) Guerrero is entitled to a qualified immunity on the constitu-
26 [4] tional claims as well. Scheuer v. Rhodes, *supra*; Harlow v.
Fitzgerald, *supra*. However, because of the state of the
record, the Court is unable to analyze the immunity claim and
accordingly denies the motion on this ground.

1 [15.16] A person's liberty interest in the employment context
2 is an independently protected interest, separate from one's
3 property rights in continued employment. When a termination or a
4 decision not to rehire a government employee is accompanied by
5 charges which affects one's reputation or standing in the com-
6 munity so as to foreclose the employee from taking advantage of
7 available job opportunities, due process interests are impli-
8 cated. Roth, supra; Orloff v. Cleland, 708 F.2d 372 (9th Cir.
9 1983); Vanelli v. Reynolds School District No. 7, 667 F.2d 773
10 (9th Cir. 1982). When a person's reputation, honor and integrity
11 are at stake because of a government action, due process comes
12 into play. Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct.
13 507, 27 L.Ed.2d 515 (19 ___). When such charges are made, due
14 process requires that a person be given notice and an opportunity
15 to clear his or her name. Codd v. Velger, ___ U.S. ___, 97
16 S.Ct. 882, ___ L.Ed.2d ___ (1977); Ong v. Tovey, 552 F.2d 305
17 (9th Cir. 1977); Quinn v. Syracuse Model Neighborhood Corpo-
18 ration, 613 F.2d 438 (2nd Cir. 1980).

19 [17.18] Not every statement which accompanies an adverse
20 employment decision infringes upon liberty interests, however;
21 the Constitution does not stand as a guarantee against ill-
22 advised employment decisions. Bishop v. Wood, supra; Gray v.
23 Union County Intermediate Education District, 520 F.2d 803 (9th
24 Cir. 1975). The charge must be made public. Bishop, supra;
25 Orloff v. Quinn, supra; Quinn v. Syracuse, supra. The allegation
26 must seriously damage the employee's standing in the community or

1 impose a stigma or other disability that forecloses his or her
2 freedom to take advantage of other employment opportunities. The
3 allegation must be so serious that it "belittles his worth and
4 dignity as an individual and, as a consequence is likely to have
5 severe repercussions outside of professional life." Stretten v.
6 Wadsworth Hospital, 537 F.2d at 366 (emphasis in original).
7 Accord, Bullock v. Federal Reserve Bank of San Francisco, 650 F.2d
8 1093 (9th Cir. 1981); Debose v. U.S.D.A., 700 F.2d 1262 (9th Cir.
9 1983).

10 [19.20] Hill alleges that Guerrero stated to the press in
11 connection with the contract veto, that "Hill's handling of labor
12 cases in general had been poor." This allegation alone is insuf-
13 ficient to implicate constitutional interests. The panel in
14 Stretten, supra, analyzed a similar fact pattern:

15 Liberty is not infringed by a
16 label of incompetence, the reper-
17 cussions of which primarily affect
18 professional life, and which may
19 well force the individual down one
20 or more notches in the professional
21 hierarchy. The distinction is not
22 perfect; our utility affects our
23 dignity and worth whether viewed
24 from within or without. However,
25 implicit in such a distinction is
26 the notion that the constitutional
need for procedural protection is
not strong when the charge (e.g.,
incompetence) involves a matter
which is peculiarly within the scope
of employer-employee relations and
when the likely results of even a
false charge are reduced economic
returns and diminished prestige, but
not permanent exclusion from, or pro-
tracted interruption of gainful employ-
ment within the trade or profession.

1 537 F.2d at 366. Thus, charges of incompetence alone do not rise
2 to constitutional infringement. Debose v. U.S.D.A., supra; Cng
3 v. Tovey, supra; Mazelski v. Truesdell, 562 F.2d 701 (D.C.Cir.
4 1977); Mervin v. FTC, 591 F.2d 821 (D.C.Cir. 1978); Paige v.
5 Harris, 584 F.2d 178 (7th Cir. 1978). It is clear then that
6 under the facts alleged, Hill suffered no infringement upon his
7 liberty interests. Summary judgment on this issue is accordingly
8 granted.

9
10 CONCLUSION

11 For the reasons stated herein; Guerrero's motion for
12 summary judgment is:

- 13 (1) GRANTED as to Count IV on the basis of absolute
14 privilege;
15 (2) GRANTED as to Hill's due process liberty claim
16 under Count III;
17 (3) DENIED as to Hill's due process property claim
18 under Count III; and
19 (4) DENIED as to Hill's interference with contract
20 under Count III.

21 DATED this 21st day of February, 1984.

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23
24 

25 JUDGE ALFRED LAURETA
26