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4 United States Court of Appeals
5 For the First Circuit of Massachusetts
6

7 James N. Thivierge,) Case No.: No. 10-1389
8)
9 Pro Se) ON APPEAL FROM A JUDGMENT OF THE
10 Plaintiff - Appellant,) UNITED STATES DISTRICT FOR THE
11) DISTRICT OF MASSACHUSETTS
12 vs.)
13 Town of Amesbury et al.,)
14 Defendant -Appellees

15 Dated this 8th day of November,
2010 Signed:

16 
17 Home Address:
18 106 Friend Street,
Amesbury,
19 MASSACHUSETTS 01913
20 James N. Thivierge
21 Citizen of the
22 Commonwealth of
Massachusetts, and
the United States of
America

23 BRIEF OF THE PLAINTIFFS - APPELLANTS - JAMES N. THIVIERGE

1
2 Corporate Disclosure Statement

3 JAMES N. THIVIERGE
4 PLAINTIFF - APPELLANT - PRO SE
5 106 FRIEND STREET,
6 AMESBURY, MASSACHUSETTS 01913
7 978-517-7163

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12 **Ninth amendment -** The Ninth Amendment provides: "The
13 enumeration in the Constitution, of certain rights, shall
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21 (other) personto the deprivation of rights, privileges and
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24 **42 USC SECTION 2000 ET SEQ CIVIL RIGHTS ACT OF 1964, P.L.88-352**

42 USC 2000d, discrimination in federally assisted programs

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1 P.L.108-81 MUSEUM AND LIBRARY SERVICES ACT OF 2003, 20 USC 9101
2 42 USC 2000d-1 federal authority and financial assistance to tion.
3 (P.L. 94 - 462) Library and Museums Services Act
4 P.L. 93 - 383 Housing and Community development of 1974 acts

5 5 USC section SECTION 706 Administrative Procedures Act
6 (Code of Federal Regulations)

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27 conspiracy equal rights under the law

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1
2 department of commerce, and the census department

3
4 5 USC Administrative Procedures Act s. 706 (Code of Federal
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17 OTHER AUTHORITIES

18 (BLACKS LEGAL LEGAL DICTIONARY - servitude; assurances;

19 Organic Law / Living Law CONSTITUTIONAL Issues

20 Declaration of Independence (1776) - Access the Public Record
21 " and distant from the depository of public records."

22 The Constitution of Massachusetts (1780) Preamble, Part the First
23 the Declaration of Rights of the Inhabitants, and Article 89 of the
24 amendments to the Massachusetts Constitution

25 United States Constitution (1787): The Constitutional Issues -

Article 1, section 8, "to make all laws necessary and proper for
carrying into execution the foregoing powers,"

section 9 clause 8; "no money shall be drawn from the Treasury but
in consequence of appropriations made by law;

Article 2 "the duty that laws are faithfully executed;

Article 3 "the judiciary the right to determine cases and
controversies arising under those laws;

Article 4 section 1 "records"; section 2 "the citizens of each
state shall be entitled to all privileges and immunities of
citizens in the several states"

1 Article 5, "amendments to this constitution...shall be valid to all
2 intents and purposes, as part of this constitution , when
3 ratified:" Amendment 1, speech, assembly, the press, and the
4 petition; Amendment 5, due process of law; Amendment 7, Trial by
5 Jury; Amendment 9, unenumerated rights; amendment 14, due process
6 under the law, equal protection under the law; amendment 15, voting
7 rights; Amendment 19,; Amendment 24,; and Amendment 26.

8 Article 6 "this constitution and all laws made pursuance thereof",
9 "shall be supreme law of the land" .

10 The Writings of Madison:

11 Letter from Madison to Jefferson October 17, 1788

12 The Federalist(1788) #69 & #73

13 Federalist 69 and 73, AND OTHERS

14 Written by Hamilton - Subject the propose executive

15 But that it would be precisely the same with that of the governor
16 of Massachusetts, whose constitution, as to this article, seems to
17 have been the original from which the convention have copies;

18 Number 73, Written by Hamilton, The chief magistrate and the
19 judiciary

20 I have in another place remarked that in the convention, in the
21 formation of this part of their plan, has departed form the model
22 of the constitution of this state in favor of that of
23 Massachusetts.

24 Amesbury Home rule charter 1996, section 1-4, 2.2

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1 questions demonstrates the aforementioned; and the judges ruling
2 returning the plaintiff-appellant to the library and a sexual
3 harassment policy demonstrates my civil rights have been violated;
4 that under the 1964 civil rights Act of 1964 the plaintiff-
5 appellant believes that due to the lack of training of staff on
6 this issue, that the executive, the mayor acting on behalf of the
7 municipal corporation, and failing to trains his employees to
8 recognize what sexual harassment is and what it is not, violates
9 the act and places the municipality liable for its actions; and
10 finally that the mayor and former mayor acting as a library
11 consultant during this time conspired and damage the plaintiff-
12 appellant's reputation and character with the written libels and
13 slanders that emanate from them under the first amendment, the
14 fourteenth amendment, fifteenth amendment, and that the mayor as
15 the executive office of the municipal corporation is accountable
16 and that the violates the Declaration of Rights of 1780 of the
17 Massachusetts Constitution as outlined in my brief to the
18 Newburyport Superior Court December 27, 2007 and other issues which
19 appears not to have been recognized throughout this process.

20 The plaintiff - appellant files this appeal under rule within 30
21 days of this judgment.

22 STATEMENT OF THE CASE

23 The Plaintiff-Appellant, James N. Thivierge, files a civil rights
24 action citing the 1964 Civil Rights Act Title VI that emerges
25 from a December 17, 2007 "No Trespass Order' by the defendant,
the Town of Amesbury et al. thru a request to the Superior court
in the shire town of Newburyport for a Writ of Mandamus filed on
December 27, 2007 seeking relief from the actions of the Town of
Amesbury on and before letter of December 17, 2007. The basis of
this action is an unlawful action the "no trespass order" by the
town of Amesbury.

This case is sent to the Lawrence Superior Court where the
defendant successfully moves the venue to the United States
District Court in Boston in early 2008 on a civil rights issue
not coincident to the "Title" cited in the Plaintiff's brief.
It is not clear in retrospect whether or not the Plaintiff was
notified of the hearing as he was not present and without reading
the transcripts cannot ascertain whether he was notified
properly, for when called the hearing has transpired. Much time
elapses between the Lawrence superior court hear to change the
venue but the plaintiff may not have been notified.

1 The first hearing occurs on March 12, 2008 before the Honorable
2 Patti B. Saris. She questions both sides and sends the case to
3 Alternative Dispute Resolution before Senior Judge Lasker where
4 confidential settlement offers were requested by the court, prior
5 to the hearing, both settlement offers were to be considered by
6 the parties. The parties reached no settlement. It is here
7 during the March 12, 2008 where the emphasis changes toward Title
8 VII of the 1964 Civil Rights Act and its issues and the
9 defendants rather the Title VI contentions of the 1964 Civil
10 Rights Act that of speech, assembly and the right of petition
11 which deprived by the "no trespass order" issued by the Town of
12 Amesbury's mayor.

8 The case was sent to Magistrate Judge Dein for mediation where
9 a mediated agreement allowing the plaintiff access to all
10 buildings except the library agreed to by both sides, with the
11 understanding that there was no blame, absolutely no culpability
12 by the plaintiff for he has committed no wrong but merely goes
13 about his business as he has since the nineteen fifties(1950's)
14 with accommodation for modern improvements like using the
15 computer and internet. Judge Saris orders adoption of the
16 mediators "Report and Recommendation" July 22, of 2008.

13 Prior to the mediation allowing access, a Presidential
14 Preference Primary is held in February of 2008 where the "no
15 trespass order" is in effect the where the plaintiff must request
16 for permission to enter the building(s) per the "no trespass
17 letter." The Plaintiff-Appellant's name does not appear on the
18 presidential preference ballot for the local town democratic
19 committee for the first time since 1976 relative to the "no
20 trespass order; however, the Plaintiff-Appellant does defy the
21 "no trespass order" on election day of the presidential
22 preference primary election and does vote for his presidential
23 preference but cannot vote for himself or others, other than the
24 defendant and two other individuals, but must write his name on
25 the ballot. All those not listed on the ballot had to write-in
their names on the ballot space for the town democratic
committee. The Plaintiff-Appellant did not enter the town hall
to sign the nomination paper for the February 2008 Presidential
Preference Primary. The evidence presented and admitted speaks
for itself two ballots one for the 2008, the other show 2004
Presidential Preference ballot and difference. During the jury
trial the judge did not allow the introduction of the town report
which contains the record of the ballot, one can see whether they
appear or not from the vote count. All towns must file their
town reports with the state's depository library by statute;
cities do not unless they maintain the practice.

1 To the Plaintiff - appellant there was concern for the police
2 met me at the door of the fire station one night subsequent after
3 seeking medical attention from the EMT's not knowing how serious
4 my ailment was. Fortunately, it was not.

5 After the Judge orders the adoption of the Magistrate Judge Dein
6 recommendation on July 22, 2008 allowing access to all public
7 buildings with the exception of the library series of motions
8 transpire on discovery, issues to the brought to the jury, and
9 witness lists, .

10 The jury trial commences on February 1, 2010 and last for four
11 days ending with a Judgment in favor of the defendants. The
12 Judge orders that the Plaintiff can return to the library and
13 what is my original issue the writ of mandamus allowing the
14 access to other building never gets addressed therefore my Notice
15 of Appeal.

16 The Plaintiff-Appellant files his Notice of Appeal on March 9,
17 2010.

18 STATEMENT OF THE FACTS

19 The Plaintiff-Appellant, James N. Thivierge, is a lifelong resident
20 of Amesbury Massachusetts, born in 1946 who spends the first five
21 years of his existence living across the street from both the
22 police station/district court and the fire station. His family
23 moves to a house several streets over for the next 16 years. He
24 attends the parochial grammar school, Ecole du Sacre Coeur, Sacred
25 heart School in English, Amesbury high school, while in attendance
and chosen for Boys State, president of his class twice, plus
president of the student council body and graduates in June of
1964.

With his morning paper route in grammar school and briefly in
high school, he earns enough money to pay for his first year of
college.; and the rest as a result of summer work at the state
beach thru gubernatorial appointment via recommendations of the
local representative and senator unbeknownst plus doing special
delivery for four years for the United States post Office and a
couple of high school coaching positions in football and
basketball. He graduates from a private catholic Merrimack College
in North Andover with a degree American Studies four years later in
1968. He enlists into the United States Navy like his uncles and
father who was a Seabee and served in Europe and the Philippines
during World War II where his sister served as a medical officer in
the Army.

1 He enters the United States Navy in May of 1968 in a 120 day delay
2 program and for four years serves first at Great Lakes training
3 Center Illinois, then Corry Field, Pensacola Florida, working in a
4 post office and playing softball and football on championship teams
5 all over the southern part of the country, and recommended for
6 officer's training school to Washington; goes to a navy training
7 center for data processing in San Diego, California after
8 qualifying for both computers and chinese; and assigned to two
9 destroyers tenders the USS Tidewaters AD-31 in Norfolk Virginia,
10 and the USS Cascade AD-16 in Newport, Rhode Island and later
11 Naples, Italia where he worked as a night computer operator
12 generating operations reports for the sixth fleet and at his last
duty station overseeing data preparations and training, played on
their championship softball team, and attended the University of
Grenoble briefly in Naples plus traveling extensively throughout
Italy with the help of NATO train discounts and museum discount
passes compliments of the Italian government afforded to us and
while on leave throughout Europe from 1971 and 1972 which enabled
the visitation of 26 countries. I receive an Honorably Discharged
with Good Conduct and a National Defense Medal in 1972 at my last
duty station.

13 After my discharge in Napoli, I traveled around Europe for almost
14 four months and after my return to the United States in December I
15 went to work at Finast Corporation home office, Somerville
16 Massachusetts with oversight of sixteen personnel and evaluation as
17 a night supervisor of data preparation while earning prerequisites
18 for graduate school at Northern Essex Community College in
19 Haverhill, Massachusetts during the daytime. I ran for Amesbury
20 town meeting member in 1973 and for the next twenty three years was
21 a member of the town meeting. In 1974 a member of the school
22 committee member, working in Newton Massachusetts selling banking
equipment and computers. I entered state service from a civil
service exam at the state department of corporations and taxation
as a junior programmer in the programs and analysis section, and
participated in the implementation of the Sudbury Decision, 100
percent equalized valuation and left as a senior programmer. I
served as an SEIU Local 250 elected union steward, and eventually
left for the state banking commission in 1978 where I began as a
data processing manager.

23 While at the banking commission I had managerial responsibilities
24 such as employee supervision, analysis and design of computer
25 programs and systems in addition to training with equipment and
personnel at various times of y twenty -two years with the agency
serving on a state vendor training on behalf of my agency; however,
primary responsibility initially was to produce the annual report
and statement condition for the state's banking industry and meet

1 the statutory deadlines in order to keep abreast public policy
2 makers both executive and legislative of its condition for the next
3 two decades plus. This time frame parallels my appointment on the
4 town's finance committee and also my election to the board of
5 selectmen for five three year terms. I became President of the
6 county selectmen's association and representative my town on the
7 county advisory board serving on its executive board. My
8 committees oversaw the county courts and registries of deeds
9 budgets. In addition, I served for a term as the president of the
10 Massachusetts Federation of Franco-American clubs with 60,000
11 members at the time. At my own club I served on the naturalization
12 committee helping those who sought our assistance to become
13 citizens of these United States, working with immigration and
14 naturalization getting the forms, books need be; in addition, I
15 attended upon invitation a ceremony at Fanueil Hall.

9 My education includes a Master's degree in Public Administration
10 from Framingham State, now, University with numerous other courses
11 work related including the Federal Reserve and FDIC in Washington
12 and Boston, personnel training within state government in many
13 different area, plus many credit in life long learning from
14 Northern Essex Community College in Haverhill Massachusetts. I
15 basically studied to a town manager and whether the laws making me
16 certifiable as a superintendent of schools because of my managerial
17 background are still have force that poses possibilities, but not
18 in my home town because I applied for assistant superintendent,
19 denied. I have taught college courses in both state and local
20 government and relational database in Boston for the New England
21 School of Finance where at the time the President of the Board was
22 the President of the local Federal Reserve Bank; and at Quincy
23 College, one of the few municipal colleges in the country. And I
24 earned a Bachelor's degree in American Studies from Merrimack
25 College in North Andover Massachusetts.

19 In July 2001, I left banking to start my own entity
20 ThinkTwoThousandPlus dedicate to generating fiscal savings and
21 increasing efficiency in doing so, and throughout this time frame
22 involvement in town issues and affairs continue. Although, the
23 local government changes structurally to a mayoral-council from in
24 1996 with term as a selectmen due to expire in 1998 truncated by
25 the ballot action, my interest takes a citizens perspective using
the municipal council rule requiring citizens comment.

23 From the July of 2001, my entity think Two Thousand Plus while not
24 profitable does develop much legislation and software towards the
25 improvement of the public process and efficiency. One bill that
became law of the commonwealth deals with the prohibition of the
use of cell phones while underway except in an emergency. This
concept has crossed cross the Mississippi river hopefully it will

1 become national. My entity conducted seminars and lost much money
2 and even predicted this economic downturn in December 2005, and
3 sent out over two hundred letters to show municipal entities can
4 contend this impending downturn not knowing about credit default
5 swaps an no regulation.

4 My issues with town become prominent as the traffic tickets begin,
5 I am in traffic court regularly, then housing court, traffic
6 appeals court submitting a brief to Middlesex county office, small
7 claims court, district, superior court, United States District
8 Court, and now the United States Appeals Court to date. In and
9 around 2005 when a third mayoral administration takes hold and the
10 outgoing mayor becomes a consultant to the local library with a
11 relatively new head librarian and a changing staff.

9 Since 1999, using my experience, on the dais, the ballot box and
10 in addition to using the public comment portion of the municipal
11 council meetings for three minutes, once a month and occasionally
12 their finance committee meetings. The second mayor worked on my
13 behalf in 1999 prior to his election in 2005 and undercut me at the
14 primary, and I lost the final by a couple hundred votes. He also
15 served, as I said, as a consultant in the library after
16 relinquishing his position in 2005 in to the next and beyond. Both
17 first and second mayor originate from not locals (200 million
18 without precedent bonding later)and the present mayor comes from
19 the next town, and is their legacy, preserves the approach and
20 expense onto to the body politic, and I believe work in concert to
21 maintain their hold on the fiscal policy process. My real problems
22 begin in 2006.

17 This is my interest area, plus with night and day experience plus
18 relevant education and a lifelong resident and concern for the
19 community, it surprised me that these issues emerge.

19 It all begins with the Plaintiff-Appellant being receipt of a
20 letter of the head librarian listing the concerns in 2005. I reply
21 requesting the library polices with which he complies, to this
22 point he assisted on a presentation called "Theophilus Parsons, the
23 most important person you never heard of we worked on a project
24 which I gave with another person, a lawyer, twice, once at the
25 Custom House in Newburyport where Parsons plied his trade and the
26 other at Northern Essex community College. Parsons is a resident
27 of Newburyport in the mid eighteenth century writes the Essex
28 Result and is credited with writing the Conciliatory Amendments for
29 John Hancock during the ratification of the United States
30 Constitution. His students include Rufus King, a member of the
31 Convention in Philadelphia in 1787 and later presidential
32 candidate, and John Quincy Adams; and is very prominent with John
33 Adams in writing of The Massachusetts Constitution and the

1 Declaration of Rights. So it came as a great surprise to me that
2 this occurred.

3 With no wrong doing and the library having no real policy on title
4 VII issues, this situation comes to a head in the December 2007
5 with the "no trespass order" and my entrance to the Newburyport
6 District Court seeking assistance on December 24, 2007 and the
7 filing of the request for a writ of Mandamus in the Newburyport
8 Superior Court. What I filed with the court and sent to Lawrence
9 Superior Court was a writ of mandamus to stay the action by the
10 town of Amesbury and its agents and revolves around Title VI of the
11 1964 Civil Rights Act, the year of my graduation from high school.
12 What follows is basically a statement of the case, supra.,
13 Statement of the Case.
14

9 Due Process and Equal Protection

10 SUMMARY OF ARGUMENT:

11 The District court did err when it did not notify the Plaintiff-
12 Appellant of the Removal Hearing in a timely fashion:

13 The Plaintiff-Appellant, JAMES N. THIVIERGE, did not receive any
14 timely notification on any hearing on this matter from Lawrence
15 Superior Court on this matter and responded only after the fact
16 when he became aware. This lack of notification seriously affecting
17 his due process rights, and equal protection under the law and the
18 Fourteenth Amendment of the United States Constitution.
19

15 Argument:

16 The state district court improperly move the case James N.
17 Thivierge v. Town of Amesbury et al. The Plaintiff-Appellant,
18 James N. Thivierge, noticed properly, was not in attendance to
19 contend the issue before the state district court. The direction
20 of this case changes from one centered around the title VI of the
21 1964 Civil Rights Act to a defense oriented action revolving around
22 a Title VII OF THE 1964 CIVL RIGHTS ACT especially evidence in my
23 recollection at the March 12, 2008 hearing in the United States
24 District Court.
25

21 The whole question of "life, liberty and happiness" centers around
22 this wrongful action by the Town of Amesbury. The Plaintiff-
23 Appellant, JAMES N. THIVIERGE, my LIBERTY have been seriously
24 affected not having access to public buildings, and the privilege
25 of attending related activities, "those privileges long recognized
as essential to the orderly pursuit of happiness by free men."
[Meyer v. Neb. (S.Ct1923)]

24 This action jeopardizes the Plaintiff-Appellant, JAMES N.
25 THIVIERGE, substantive and his procedural rights.

1 Standard of Review DE Novo Review Discussion of the Issues The
2 Plaintiff-Appellant, JAMES N. THIVIERGE, affecting both his DUE
3 PROCESS AND EQUAL PROTECTION rights under the Fourteenth Amendment.
4 The basic functions are due process is to afford " an opportunity
5 to be heard.... at a meaningful time in a meaningful manner,"
6 thereby promoting fairness and accuracy in the resolution of
7 disputes.[Fuentes v. Shevin(S.Ct1972)]. The Plaintiff-Appellant,
8 JAMES N. THIVIERGE, was not heard on this issue.

9 What emerges to the jury trial on February 1 2010 thru February 4
10 2010 is not what the Plaintiff-Appellant, James N. Thivierge, files
11 in Newburyport Superior Court December 27, 2007 over two years
12 earlier. I filed a writ of mandamus to stay the "no trespass"
13 basically because I thought it was fraudulent and it was
14 ultimately. Effectively, what I brought to the Newburyport
15 Superior Court on December 24, 2007 is still outstanding. I am
16 aggrieved having done no wrong but show at meetings for public
17 comment.

18 DE Novo Standard of Review

19 Discussion of the Issues

20 The Plaintiff-Appellant, JAMES N. THIVIERGE, affecting both his
21 DUE PROCESS AND EQUAL PROTECTION rights under the Fourteenth
22 Amendment. The basic function are due process is to afford " an
23 opportunity too be heard.... at a meaningful time in a meaningful
24 manner," thereby promoting fairness and accuracy in the resolution
25 of disputes.[Fuentes v. Shevin(S.Ct1972)]. The Plaintiff-
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ultimately. Effectively, what I brought to the Newburyport
Superior Court on December 24, 2007 is still outstanding. I am
aggrieved having done no wrong but show at meetings for public
comment.

Voting Rights

SUMMARY OF ARGUMENT

The District Court did err when it did not consider the following
evidence:

The United States District Court in the Jury Trial did not find or
act on within the verdict the question of whether the Plaintiff-

1 Appellant, JAMES N. THIVIERGE, Town of Amesbury et. al. "abridge
2 his right to voting rights" and violate the Voting rights Act of
3 1965, and the Fifteenth Amendment plus Fourteenth amendments to the
4 United States Constitution with the "no trespass letter" by
5 establishing prerequisite or a legal servitude as defined by
6 Black's Legal Dictionary on Tuesday, the fifth day of February 2008
7 from 7:00AM TO 8:00pm to cast their votes in the Presidential
8 Primary for the candidates of political parties for the following
9 offices: Presidential Preference for this commonwealth; State
10 Committee Man Senatorial District; State Committee Woman Senatorial
11 District; Ward or Town committee City or Town. Given under the
12 hands this day of 8th day of January, 2008. Municipal Council of
13 Amesbury.

14 Argument:

15 The Voting Rights Act of 1965 states, 42 USC SECTION 1973, Denial
16 or abridgement of right to vote on account of race or color through
17 voting qualifications or prerequisites; section 1973c, also states
18 abridgement of voting rights.

19 The Town of Amesbury's via their administrative agent, the mayor,
20 within his written "no trespass letter" states that to gain
21 entrance, one has to seek permission in order to enter town
22 facilities. The mediated agreement between the Plaintiff-
23 Appellant, JAMES N. THIVERGE, does not occur till late summer when
24 the Honorable Judge Saris signs the agreement for the Plaintiff-
25 appellant to regain access till otherwise agree or determined. I
might add the current situation where the Plaintiff-Appellant,
JANMES N. THIVIERGE, does not have access to town facilities other
than the library as per the Judge's ruling from the jury trial.
From December 17 2007 till the mediated agreement the Plaintiff-
Appellant, does not have access to the town hall where the
Presidential Preference Primary is held and also the votes are cast
for ward or town committee man ward or precinct. I reside in
precinct or district six in the town of Amesbury and have been on
the Presidential primary ballot since 1976. In 2008 my name does
not appear due to the "no trespass letter" and the prerequisite to
request permission. On February 8, 2008, I entered the town hall
in the afternoon and cast my presidential preference ballot and
wrote my name in for town committeeman. Had there been no
restriction or prerequisite as per the "no trespass letter" my name
would have been on that ballot as it has since 1976.

Presently, two elections will transpire I will vote under the
Judge's ruling which does not allow me into the buildings other
than the library as I understand the ruling. The town of Amesbury
abridges my privilege, the right to vote, under Fourteenth
Amendment, and perhaps the Nineteenth Amendment because I am man,
and maybe the twenty-sixth amendment being 64 years old, you can

1 never can tell? Nonetheless, the "no trespass letter" is a
2 prerequisite that Black's Legal dictionary defines as a legal
3 servitude. I might add that the Plaintiff-Appellant, JAMES N.
4 THIVIERGE, is a resident of the Town of Amesbury and registered for
5 the privilege of voting. It can serve as notice of intimidation
and unless this "no trespass letter" challenged others rights will
be abridge in a similar fashion and I have done no wrong plus
nearly three years to get to this point.

6 Standard of Review

- De Novo

7 Discussion of the Issues

8 In Brooks v. Nacrelli, the plaintiff alleges intimidation and that
9 the his First Amendment Right of free expression, the privileges
10 and immunities and equal protection of the Fourteenth amendment
11 come into play and that certain activities violate 5 USC 1501. 42
12 USC SECTION 1971 PROVIDES THAT "All citizens of the United States
13 who are otherwise qualified by law to vote at any election. It is
14 clear that the Constitution of the United States protects the
15 rights of qualified citizens to vote in state as well as federal
16 elections. [Reynolds v. Sims 377 US 533, 554 S.Ct 1362] The
17 Plaintiff-Appellant having done no wrong and beset with this
18 "order" and the result of the jury trial not dealing with the voter
19 rights questions still has right to the voting privilege abridge in
20 a sense with both a federal primary and final elections for
21 Congress. What makes it different from some of the other First
22 Amendment rights in addition to freedom of expression, I cite in my
23 initial brief before the Newburyport Superior Court and the Right
24 of Petition which was and is also abridge by the action of the Town
25 of Amesbury and the Judge's ruling from the jury trial as I
understand it, presently. I cannot file a petition of any kind, nor
get a birth certificate or a fishing license, nor receive notary
services, nor file a nomination paper for the Attorney General of
the Commonwealth for re-election without the police showing up
because I do not have permission. The Defendant-Appellee's, the
Town of Amesbury et al., "no trespass order" is a form of
intimidation from the local public discourse that keeps the
Plaintiff-Appellant from the public record, as well as making
another person so affected "think' about whether they can vote
affecting the privilege of the franchise or how they interact.
Viewed wrongly by the body politic, can affect participation and
ultimately representation its quality and quantity aside from
constraining " liberty and the pursuit of happiness" especially for
those who have made their interests in government their life's
work, like me, who do it with the best interests and intentions of
their actions, perhaps with a little chicanery at times, but in the
promotion of the public and common good. It was the first time in
32 years my name did not appear on the Presidential Preference

1 Primary ballot since 1976 the 200th anniversary of the Declaration
2 of Independence; and that the presidential preference primary
3 ballot for precinct democratic town committee was tailored for the
4 sitting mayor, municipal council president and committee treasurer
5 or secretary and others members forced to write in their names and
6 the Plaintiff-Appellant, JAMES N, THIVIEREG, abridge from entering
7 the town hall without permission and unable to sign the nomination
8 paper for town democratic member for the presidential preference
9 primary February 8, 2008.

Trial by Jury - Evidence

SUMMARY OF ARGUMENT:

8 The District Court did err when it did not allow consideration of
9 the following evidence:

10 The Plaintiff-Appellant, JAMES N. THIVIERGE, attempted to place
11 into evidence two key documents that were key components toward
12 illuminating the jury on my behalf: the town reports that contain
13 their actions in promulgating policies and acceptances of grants of
14 federal assistance and the "authorizations" that in turn promote
15 the annual congressional appropriations, the public laws, that
16 contain federal financial assistance for the fifty states and the
17 twenty thousand potential localities across these United states and
18 351 communities within the Commonwealth of Massachusetts.

Argument:

15 In my initial brief before the Newburyport superior court I refer
16 to the 1964 Civil Rights Act the year I graduated from high school.
17 The inability to access the public record in a federally assisted
18 program for the public's information is a potential violation of
19 2000d, and/or 2000d-1 of 42 USC regardless of whether you are a
20 participant in a federal program or not. The public's right to
21 know is paramount and knowing how the money is spent is.

Standard of Review

20 The Plaintiff-Appellant, JAMES N. THIVIERGE, believes that the
21 district court made an erroneous assessment of the evidence I
22 attempted to include into the trial record. The district court did
23 not make any qualifications I believe these decisions can be
24 reviewed de novo.

Discussion of the Issues

24 Whether it is an abuse of discretion, I doubt. Both attempts to
25 include into evidence the documentation of the town report, a
public record that is required in most communities to send to one
of the state's depository libraries like the town report which I
might add also includes the warrants for presidential preference.

1 The trial judge did not articulate the reason or reasons for the
2 ruling. But, it may be that the trial judge did not realize that
3 these two pieces of evidence offered to the jury were in fact
4 critical by lack of understanding of each that is in a loose sense
5 "an abuse of discretion." Many people do not know or have ever
6 seen a town report; you expect to know of its purpose and relevancy
7 as a public record. So too, the importance of 'authorizations"
8 that spawn appropriations and that all appropriations must be in
9 accordance with law and the Constitution Article 1, section 9
10 clause 7. Federal Assistance monies must be appropriated. The
11 testimony of library employees and the mayor center around a grant
12 they received for new computers under the Library Services and
13 Technology Act which emanate from the Museum and Library services
14 authorization Act of 1976 and subsequent re-authorizations. The
15 Amesbury public library programs funded by grants such as
16 "EqualAccess," "Mother Goose" and "ThinkAhead" all have assurances
17 they must subscribe and the Civil Rights Act of 1964 is one of the
18 many; the commonwealth of Massachusetts must subscribe to these
19 same set of assurances not only by statute but also by the code of
20 federal regulations. These assurances are contractual and in the
21 case of the commonwealth of Massachusetts it is the Attorney
22 General who signs the agreement. In cities and towns it the mayor
23 and the chairperson of the board of selectmen as I once was and/or
24 the president of the council under some of the new structural
25 arrangements.

Trial by Jury

SUMMARY OF ARGUMENT:

17 The district court did err by not extending and restoring access
18 the all town facilities to the Plaintiff-Appellant, JAMES N.
19 THIVIERGE, in her ruling restoring access to the library and the
20 other town wide buildings. In addition, The Plaintiff-Appellant
21 was dispositive prior to the Jury Trial but his verbal request to
22 submit was denied due to lack of time. The jury's "inconsistent
23 verdict" is emblematic of the jury questions.

Standard of Review

Not DE Novo

Discussion of the Issues

24 It is my understanding having experienced this jury trial that
25 there are numbers of factors that must be considered: no human
person could ever all three sets of jury instructions I've taken
speed reading a barely got through one copy let alone the changes

1 to the subsequent versions; the jury questions too many sets, it is
2 understandable that the jury returned an "inconsistent verdict."
3 numerous to comprehend. The luster of Trial by jury dims by the
4 verdict for someone who has spent his life in public service did
5 not expect this return based on the trial however the evidence
6 denied and the closing argument truncated made a bid difference to
7 me. How anyone could read the three sets of jury instructions plus
8 the multiple sets of jury questions is beyond me. There's no way I
9 should be denied the simple answer is that they cannot take because
10 they are not prepared. Having virtually no knowledge of the
11 subject sexual harassment is the tip of the iceberg and one of the
12 foundational reasons WHY government costs so much, as long as you
13 have a hired gun to do your dirty work, you don't have to know
14 anything. Just send it to Boston! Just goes to show, you can do
15 no wrong, work your butt off and lose just because, they can't take
16 the heat. [Young v. Secretary of Health and Human Services - 957
17 F.2nd 386] The Defendant-Appellee the Town of Amesbury created an
18 audit trail of incident reports the Plaintiff-Appellant, JAMES N.
19 THIVIERGE, never in life knew they can do. It turns out any body
20 can do it, file an incident report and doesn't have to be true, it
21 can be false.

22 Over the course of the jury trial I nearly objected to every
23 statement of the library staff. Perjury may not be out of order
24 from my standpoint. The district court did err.

25 Libel and slander

SUMMARY OF ARGUMENT:

26 Given my initial brief filed in December 26, 2007 in the
27 Newburyport superior court and transferred to the Lawrence Superior
28 court on page 6 of my December 26 2007 brief to the state district,
29 I mention "the dangerous mis-characterization and libel that can
30 damage one's reputation and lead to the slanders that do just that,
31 and against my constitutional rights cited." The law of defamation
32 embodies the public policy that individuals should be free to enjoy
33 their reputation unimpaired by false and defamatory attacks. This
34 act of defamation to the Plaintiff- Defendant, JAMES N. THIVIERGE,
35 is violation of the right.

Argument:

26 Having done wrong but merely sign up for the computer, use the
27 reference room prior to read Madison AND Marshall and do research
28 on Theophilus Parsons, the "no trespass letter" and an earlier
29 letter(s) falsely accuse the Plaintiff-Defendant, James N.
30 Thivierge, of wrongs that the Defendant-Appellee had no accurate
31 knowledge of and neither did his subordinates and did defame and
32 injure the Plaintiff-Defendant, James N. Thivierge.

1
2 Standard of Review - DE Novo

3 Discussion of the Issues

4 The "no trespass letter and order" to the Plaintiff-appellant,
5 JAMES N. THIVIERGE, defames and injures his good name and
6 reputation, demonstrating reckless disregard for the truth and a
7 conscious indifference to the Plaintiff-Appellant's rights.

8 [Eubanks v. Smith 292 SC 57, 354 se2d 898] written by the
9 Defendant-Appellant the Town of Amesbury and its Mayor Thatcher
10 Kezer constituting a constitutional malice. A defamation of the
11 Plaintiff-Appellant incurs "which causes him to be avoided or
12 deprive of benefits of public confidence or injure him in his
13 occupation." [Madison v. Bolton 234 la 997, 103 So 2d 433]

14 Who will ever know how many slanders did the "no trespass
15 letter/order covered by the newspapers and carried over the
16 internet, generate injuring further the reputation and
17 opportunities for the Plaintiff-Appellant, JAMES N. THIVIERGE.
18 There are many definitions of slander just as there are of libel.
19 One definition defines slander "as the publication of defamatory
20 matter by spoken words." [Bennett v. Norban, 396 PA 94, 1515 A2d
21 476]. The absence of good faith constitutes malice toward the
22 Plaintiff-Appellant, JAMES N. THIVIERGE, its continued presence on
23 the world wide web makes this libel omni present and potentially
24 world wide. With many acquaintances and friends, relatives all
25 whom I have not seen for some time, the libel and when uttered
words, the oral publication, can injury reputation and
possibilities all over this country and beyond, creating a record
difficult redact.

18 Municipal Conspiracy

19 SUMMARY OF ARGUMENT:

20 Under 42 USC 1981 "All persons under the jurisdiction of the United
21 States shall have the same right in every state and territory.....to
22 the full and equal benefit of all laws and proceedings for the
23 security of persons and property." Section 1983 covers the
24 deprivation rights, privileges or immunities secured by the
25 constitution and laws." Section 1985 revolves around the
conspiracy to interfere with civil rights when and if two or more
persons in any stat or territory conspire...for the purpose of
depriving, either directly or indirectly any person or class equal
protection of the laws, or of equal privileges and immunities under
the law....etc. It is no coincidence that the intention was to keep
me out of public facilities forever. It involves the a number of
staff appointed by the mayor, the police thru the use of the
incident reports which I have never seen before the town's

1 discovery; since then I have learned that anyone can file one but
2 not unless your encourage or told.

3 Argument
4 Standard of Review
5 Not DE Novo

6 Discussion of the Issues

7 One might think at the outset that this claim is farfetched, let
8 the Plaintiff-Appellant, JAMES N. THIVIERGE, disclose that he is
9 back in the library via the ruling of the Honorable Judge. This
10 ruling negates the claims carried to the trial by the Defendant-
11 appellees. On this issue, that of sexual harassment from the
12 outset, the subordinates of the mayor did not demonstrate a
13 knowledge of the subject matter neither from the library nor the
14 police station. In the first hearing on this issue, the Honorable
15 Judge told defense counsel "this is not what you think is" from my
16 recollection. My attempt to secure the transcript pro se in forma
17 ad pauperis has not been successful to include the excerpt of this
18 exchange in my addenda. But take into consideration the following,
19 in light of the Honorable Judges ruling:

20 The former mayor did become a carry over paid consultant to the
21 current mayor, the same person who under cut me in 1999 election
22 which I barely lost and under whom this whole situation begins;
23 secondly, the official police incidents that they refer during the
24 trial are with the cooperation of the police department who gave
25 all these traffic tickets, depleting income and time and who is to
say; the current mayor is the legacy of first and second mayors,
all of which I contended in the election process, the highest form
of free speech.

I'm back in the library where all of this begins. The Honorable
Judge thru her remarks in the first hearing conducted at the United
States district Court on March 12, 2008 states "this isn't what you
think it is" to the opposing counsel; and in the last hearing prior
to the jury trial reaffirms the statement and adds "was there any
touching?" Well I know there was absolutely no touching and also
their claims were completely unfounded!

I state that there was a conspiracy by three administrations some
more, some less, with and thru, the power of the "corner office"
from the beginning of 1999 thru the end of the jury trial February
4, 2010 to keep a most knowledgeable, informed, interested, educated
and experienced at the local, county and state level out of
government some 200 million dollars later in unprecedented
financing with innumerable other questionable opaque practices and

1 in doing so conspired and violated my civil rights under 42 USC
2 1985. [Roybal v. Albuquerque, CV No. 85-1616 HB, UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF NEW MEXICO, 653 F. Supp. 102; 1986].

4 Unlike what James Madison refers to the "the majority" in his
5 speech proposing the amendments his proposal for the bill of
6 rights, to the members of the First Congress. In Amesbury there is
7 no majority but plural government where the coalition is with the
8 holders of the corner office, involving aligned staff, certain
9 staff but not all, "the best three," promotions then police
10 sergeant now a police chief, details
11 the elective quid pro quo contracts salary increases that includes
12 the next town "vig" for other local elections, ergo the side town
13 legacy, all "motivated by" [Schlager v. Beard, No. 10-2184, UNITED STATES COURT OF
14 APPEALS FOR THE THIRD CIRCUIT, 2010 U.S] perhaps an ex mayor carry over
15 consultant, not the Plaintiff-Appellant, JAMES N. THIVIERGE, who
16 proposes tax reductions and efficiencies to lower the tax on local
17 homeowners.

18 I am back in the library thru the Honorable Judge's ruling;
19 however, I am still not allowed into the other public buildings and
20 unable to participate in public functions within until this is
21 clarified plus they receive federal financial assistance monies by
22 grant request for library programs. I have done no wrong,
23 committed no crime but be a participant in the public process thru
24 public comment allowed by the Amesbury Home Rule Charter 3.5(c),
25 and the election process etc. The subject of my initial brief on
12/26/2007 to the Newburyport Superior Court is the request for a
writ of mandamus to stay the action, that request is still
outstanding! It cites the violation 1964 Civil Rights Act one of
the assurances they must as municipal corporation comply; so too,
these same assurances including the 1964 Civil Rights Act that need
compliance by the state to the federal government are agreed to by
the Attorney General of the commonwealth of Massachusetts. They
cannot make these allegations when they do not know what constitutes
sexual harassment. I have taken the course four times: once with
the division of banks; another the state personnel department
breakfast series and twice in graduate school prior to graduation
in 2002 from, now, Framingham State University, the college
established in 1839, in Employment Law and Personnel Administration
as part of my Master's of Art's degree in Public Administration. I
knew what it was, and what it was not! My injury, I am ad
pauperis, my house foreclosed, and with debts largely due in part
to this proceeding to clear my name and restore my reputation.
This action filed December 24 at the state district court then the
day after Christmas, the first work day after December 26, 2007 the
Superior Court both of Newburyport Massachusetts.

1 Accountability

2 SUMMARY OF ARGUMENT:

3 The Honorable Judge denying the defendants summary judgement cites
4 in her opinion the declaration of rights of the Massachusetts
5 Constitution, the Plaintiff-appellants uses this same Declaration
6 of Rights of the Constitution of Massachusetts and the Article V
7 because this case does center around the Ninth amendment of our
8 United States Constitution "those unenumerated powers" not
9 mentioned in the first eight of the bill of rights. The issue(s)
10 which I bring is that off accountability cited in the 5th Article of
11 the "Part the First," A Declaration of Rights of the Inhabitants of
12 the Commonwealth of Massachusetts.

9 Argument:

10 The mayor shall cause all laws, ordinances and orders for town
11 government to be enforced. How can he, when neither he nor his
12 subordinates know what they really are or say specifically. I t is
13 apparent to this individual that neither the department head the
14 head librarian in 2005, and the sergeant, later lieutenant, now
15 chief, in the former did not know but merely went on the word of
16 his subordinates and in the case of the sergeant now police chief
17 failed to advise the mayor that this was not what is was, because
18 did not know. Instead, they do what they and farm it out to the
19 attorney. We are paying you, you handle it!- A municipality can
20 also be held liable under 42 USC Section 1983 for injuries
21 resulting from a failure to train its employees properly. "A
22 municipality's failure train to train its employees in a relevant
23 respect evidences a deliberate indifference to the rights of its
24 inhabitants." [City of Canton v. Harris (S.Ct 1989)]

18 Standard of Review - DE Novo

19 Discussion of the Issues

20 One of the many central issues in this case is the accountability of the
21 final policy maker. The Ninth Amendment of the United States Constitution
22 ratified by a sufficient number of states 12/15/1791 provides: "The
23 enumeration in the Constitution, of certain rights, shall not be construed to
24 deny or disparage others retained by the people." Justice Goldberg comments
25 that the liberties protected by the fourteen amendment are not limited to
those mentioned in the first eight amendments. [GRISWOLD ET AL. v.
CONNECTICUT - 381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510]. The
Massachusetts's Constitution of 1780 and the Declaration of Right's of the
Inhabitants, Article V, states all power residing originally in the people,
and being derived from them, the several magistrates and officers of
government, vested with authority, whether legislative, executive or judicial
are their substitutes and agents, and are at all times accountable to them.

1 The Preamble to this same constitution states that the body politic is formed
2 by a voluntary association of individuals - it is a social compact by which
3 the whole people people covenants with each citizen, and each citizen with
4 the whole people that all shall be govern governed by certain laws for the
5 common good."

6 And the Amesbury Home Rule Charter (1996) thru sections 1-1 thru 1-6,
7 specifically 1-4 which states Powers of the town, the intent and purpose of
8 this charter is to secure for the voters of the town of Amesbury, through the
9 adoption of this charter, all the powers possible to secure for their
10 government under Article LXXXIX of the amendments to the constitution of the
11 commonwealth and the laws of the commonwealth, as fully and as thou each such
12 power were specifically enumerated herein and is subordinate to amendment 89
13 of the Constitution of Massachusetts and its laws;

14 and both Commonwealth v. Hudson, 315 Mass. 335, 52 N.E. 2nd 566 (1943) and
15 City of Cambridge v. Commissioner of Public Welfare, 357 Mass. 183,
16 257 N.E. 2nd 782(1970) clarify the issue of the political
17 subdivision within the purview of the Commonwealth of
18 Massachusetts. "that Massachusetts's cities and towns are subject to the
19 plenary legislative power of the commonwealth. As stated by the Supreme
20 Judicial Court, "a town is not an independent sovereignty. It is merely a
21 subordinate agency of the state government. It is creature of the
22 Commonwealth, from which are derived all its powers and those of its voters."

23 Article 2.2 of the same Amesbury Home Rule Amendment, Executive
24 Powers of the Mayor, "that the mayor shall cause the laws,
25 ordinances and orders for town government to be enforced."

And given the Federalist 1788, numbers #69 & #73 and others, both written
by Hamilton, the subject of the propose executive " But that it would
be precisely the same with that of the governor of Massachusetts,
whose constitution, as to this article, seems to have been the
original from which the convention have copies; and #73, the
proposed " The chief magistrate and the judiciary I have in another
place remarked that in the convention, in the formation of this
part of their plan, has departed from the model of the constitution
of this state in favor of that of Massachusetts.

So, Madison says in his proposition of constitutional amendments on June 8,
1789 before congress "the exceptions here or else where in the constitution,
made in favor of particular rights, shall not be construed as to diminish the
just importance of other rights retained by the people." Accountability,
Article V of the Declaration of Rights of Massachusetts Constitution is one
of those rights; and what follows under Article 89, the penumbra of our
Amesbury Home Rule Charter thru 1-4 and 2-2, makes the final policy
accountable for his actions. According to Pembaur v. Cincinnati (S.Ct
1986) to those establish official policy, specifically "officials

1 responsible for establishing final policy with respect to the
2 subject matter in question."

3 Municipal Liability

4 SUMMARY OF ARGUMENT:

5 The primary issue(s) among the many is the failure of the policy
6 maker, the final authority, within the municipal corporation, is an
7 understanding of what constitutes sexual harassment. This leads to
8 the "no trespass letter," this failure to understand the issue.

9 The have no specific policy nor any real understanding of the
10 specifics of this issue or what actions make it, what they alleged.
11 No significant training exists. A reliance on a general idea of
12 what it was or is, make this oppression real and dangerous to the
13 body politic.

14 Argument:

15 The failure to train its employees is paramount issue as well and
16 combination with the employees not having a good handle on this
17 issue, the department supervisor as well and final policy maker and
18 admits that he aware in general. Monies appropriated for this type
19 of training was struck from the budget many years prior at least
20 five or ten years ago by the first mayor. For it is, I, that put
21 it there for fiscal year 1997 for that specific purpose, a sum of
22 10,000 thousand dollars. With the majority agreement of the
23 members of the board of selectmen and voted by the legislating
24 body, the appropriators, the town meeting of the municipal
25 corporation of Amesbury.

17 Standard of Review

18 De novo

19 Discussion of the Issues

20 It is the "no trespass letter" of December 17, 2010 that re-
21 "inflicts the injury that government as an entity is responsible
22 under 42 USC Section 1983. "It is when execution of a government
23 policy or custom, whether made by its lawmakers or by those whose
24 edits or acts may fairly be said to represent official policy,
25 inflicts the injury that the government as an entity is responsible
under section 1983. [Monnell v. Department of Social Services
(S.Ct.1978)]

A municipality can also be held liable under 42 USC Section 1983
for injuries resulting from a failure to train its employees
properly. "A municipality's failure train to train its employees in

1 a relevant respect evidences a deliberate indifference to the
rights of its inhabitants." [City of Canton v. Harris (S.Ct 1989)]

2
3 Municipal liability attaches according to [Pembaur v. Cincinnati
(S.Ct 1986)] to those establish official policy, specifically
4 "officials responsible for establishing final policy with respect
to the subject matter in question."

5 In City of St.Louis V. Praprotnik (S.Ct.1968} the opinion concluded
6 that the supervisor's discretionary decisions are "subject to
review" by authorized policy makers, the latter officials have the
7 final policy making authority." These are actions that 42 USC
SECTION 1983 oversee that establish municipal liability.

8 In the mayor's testimony (see addenda - Day one of the jury trial -
February 1, 2010) he says while on the witness stand to the
9 question put before the witness "Do you know what constitutes
sexual harassment" by the Pro Se Plaintiff-Appellant, James N.
10 Thivierge, to which he answered, "I'm not sure what the legal
definition is, but based on the reports I were getting it was
11 fitting the general - my general understanding of sexual
harassment.

12
13 The mayor has final authority he was not sure what it was, and
neither were his supervisor subordinates nor his employees. The
14 injury here is being wrongly accused by those who thought they
knew what it was, that is sexual harassment, but really did not
15 know what constitutes the act.

16 CONCLUSION

17 The relief sought by the Plaintiff-Appellant, JAMES N. THIVIERGE,
18 for the United States Appellant Court to immediately restore my
natural access to all public facilities and functions that he has
19 been accustom to and happy with throughout his adult life till this
20 change occurred, in and around, the early part of the two thousands
nearly six years ago; and that the Plaintiff-Appellant seeks
21 damages for he has lost his house and incurred considerable debt
and inconvenience during the course of these proceedings in
22 addition loss of reputation due to the many misinterpretations that
23 can be held due either the lack of knowledge of the proceedings
24 and the malice of libel and the slanders that emanate from letters,
25 his Civil Rights violated under the 1964 Civil Rights Act, the 1965

1 Voting Rights Act. I have done no wrong, and broken no law, but be
2 an interested citizen running for public office, one of the highest
3 forms of free speech and speaking knowledgeably with considerable
4 background and experience at public comment on issues that I am
5 familiar from first hand experience with the public interests and
6 the best intentions, as a former public official in the town, and a
7 state official in my day time work life in Boston plus specific
8 graduate education in field to reference in those comments. I
9 believe I have been wrongfully accused and kept out of the public
10 facilities and functions of the community. The Plaintiff-
11 Appellant, JAMES N. THIVIERGE, FALSELY AND MALICIOUSLY WRONGED BY
12 THE TOWN OF AMESBURY AND THEIR AGENTS AND RESPECTFULLY SEEK RELIEF
13 AND REMEDY BY THE WISDOM OF THE UNITED STATES APPELLATE COURT FOR
14 THE FIRST DISTRICT.

15 CONCLUSION, IN OTHER WORDS

16 COMPLETE RESTORATION OF ACCESS to all public facilities, LIKE IT
17 NEVER HAPPENED WITH DAMAGES FOR A WRONGFUL ACTION initiated over
18 six years ago.

19 Certificate of Compliance with Rule 32(a)

20 Certificate of compliance with Type-volume Limitations,
21 Typeface Requirements, and Type Style Requirements

22 1. this brief complies with the type-volume limitation of Fed R.

23 App. 32(a)(7)(B) because:

24 this brief contains (state the number of words) , excluding the
25 parts of the brief exempted by Fed r. App. 32(a)(7)(B)(iii), or

1 this brief uses a monospaces typeface and contains (state the
2 number of lines) of text excluding the parts of brief exempted by
3 Fed R.. App P. 32(a)(7)(B)(iii).
4

5 2. This brief complies with the typeface requirements of Fed R..
6 App P. 32(a)(5) and the type style requirements of Fed. R.
7 App/ 32(a)(6) because:
8

9 This brief has been prepared in a proportionally spaces typeface
10 using (state name and version of the word processing program) in
11 (state font and name of type style) or
12

13 This brief has been prepared in a monospaced typeface using
14 (state name and version of the word processing program) with
15 (11.5 state number of characters per inch and name of the type
16 style - courier).
17

18 Addenda from the third day of the trial
19

20 Q. Can I ask this question: Are you aware -- I mean, you're
21 in the public administration. This budget is 120 something
22 million. Are you aware that federal grants has to pass the
23 civil liberty and civil rights muster as part of the
24 authorization process in the Judiciary Committee? Are you
25 aware of that?

MS. DOYLE: Objection.

THE COURT: Sustained. You may step down. I think
you're done with --

1 9 Q. The Town of Amesbury, the city known as the Town of
2 10 Amesbury receives a lot of federal grants, do they not?

3 11 A. We do.

4 12 Q. You receive fire grants?

5 13 A. We do.

6 14 MS. DOYLE: Objection.

7 15 THE COURT: Sustained, irrelevant.

8 16 Q. Do you receive -- did the town receive a library and
9 17 technology grant?

10 18 MS. DOYLE: Objection.

11 19 THE COURT: I'll allow this. Do you know?

12 20 A. Yes, I believe they did.

13 21 Q. That grant was for new computers, was it not?

14 22 A. Yes.

15 23 Q. Have the new computers been installed?

16 24 A. Yes.

17 25 Q. Did you get the library grant through the Library

1
2 1 Technology Act?

3 2 A. The grant was applied for by the library staff, so I don't
4 3 have specifics on the application process. I am aware that
5 4 they received the grant because they need to file through the
6 5 council, through the mayor going to the council for any grants
7 6 received.

8 7 Q. It was in the public record. That's why I'm referring to
9 8 it. I attended the meeting, I saw the agenda, and I have
10 9 the --

11 10 MS. DOYLE: Objection, your Honor.

12 11 THE COURT: Sustained.

13 12 MR. THIVIERGE: This is a library grant, your Honor.

14 13 THE COURT: Sustained, sustained. We're talking about
15 14 these incidents.

16 15 MR. THIVIERGE: But it all revolves around the
17 16 computer.

18 17 THE COURT: Well, ask about the computer.

19 18 Q. These are new computers. You just got new computers by a
20 19 library grant from the -- from the -- applied from the Library
21 20 Commissioners, right, the Library Commissioners of the
22 21 Commonwealth?

23 22 MS. DOYLE: Objection.

24 23 THE COURT: I'll allow this.

25 24 A. Again, I'm aware that we received a technology grant to
26 25 install some new computers and improve the network connection

1
2 1 Technology Act?

3 2 A. The grant was applied for by the library staff, so I don't
4 3 have specifics on the application process. I am aware that
5 4 they received the grant because they need to file through the
6 5 council, through the mayor going to the council for any grants
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9 8 it. I attended the meeting, I saw the agenda, and I have
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14 13 THE COURT: Sustained, sustained. We're talking about
15 14 these incidents.

16 15 MR. THIVIERGE: But it all revolves around the
17 16 computer.

18 17 THE COURT: Well, ask about the computer.

19 18 Q. These are new computers. You just got new computers by a
20 19 library grant from the -- from the -- applied from the Library
21 20 Commissioners, right, the Library Commissioners of the
22 21 Commonwealth?

23 22 MS. DOYLE: Objection.

24 23 THE COURT: I'll allow this.

25 24 A. Again, I'm aware that we received a technology grant to
26 25 install some new computers and improve the network connection

1
2 1 in the library. The details that I'm aware of are based on
3 2 what needed to be filed with the council in order to accept t
4 3 money and have it appropriated. The specifics of the
5 4 application process I was not involved in.

6 5 THE COURT: Are the only computers that are accessib
7 6 in the library itself?

8 7 THE WITNESS: I'm sorry?

9 8 THE COURT: Are the computers only accessible in the
10 9 library itself?

11 10 THE WITNESS: Yes.

1
2 THE CLERK: All rise for the jury.

3 (Jury excused.)

4 THE COURT: Thank you. So this case is now resolved.

5 The only question that has been unclear from the beginning, and
6 now we've got some clarity on it, is about the library. So I
7 think you need to tell the library that the no-trespass order
8 is no longer in effect.

9 I think you can go into the library if you want to.
10 That having been said, you need to comply with the code in
11 terms of sexual harassment and other appropriate patron
12 conduct. So that's the way this is, and we will enter judgment
13 in accordance with this verdict.

14 MS. DOYLE: Thank you, your Honor.

15 MR. THIVIERGE: Thank you, your Honor.

16 THE CLERK: Court is in recess.

17 (Adjourned, 4:03 p.m.)
18
19
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JAMES N. THIVIERGE,)	
)	
Plaintiff)	
)	
-VS-)	CA No. 08-10123-PBS
)	Pages 1 - 92
TOWN OF AMESBURY, et al,)	
)	
Defendants)	

JURY TRIAL - DAY ONE

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts
February 1, 2010, 9:10 a.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617)345-6787

1
2 12 Q. Do you know what constitutes sexual harassment?

3 13 A. I'm not sure what the legal definition is, but based on
4 14 the reports that I were getting, it was fitting the general --
5
6 15 my general understanding of sexual harassment.

7 16 MR. THIVIERGE: Thank you very much. I have no
8 17 further questions, but I, you know, would like the chance to --
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1 THE CLERK: All rise for the jury.

2 (Jury excused.)

3 THE COURT: Thank you. So this case is now resolved.
4 The only question that has been unclear from the beginning, and
5 now we've got some clarity on it, is about the library. So I
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11 conduct. So that's the way this is, and we will enter judgment
12 in accordance with this verdict.

13 MS. DOYLE: Thank you, your Honor.

14 MR. THIVIERGE: Thank you, your Honor.

15 THE CLERK: Court is in recess.

16 (Adjourned, 4:03 p.m.)
17
18
19

20 SIDE-BAR CONFERENCE:

21 THE COURT: There's a possibility of an inconsistent
22 verdict. I'm going to have them announce it in court, so I'm
23 going to have them read it and see if you both want to send
24 them back. So let me just have you focus on this and then cc
25 see me at side bar if you want that, okay?

(End of side-bar conference.)

12.24.07

106 Friend Street, Amesbury, Massachusetts 01913

01 Uua o
2473C

James N. Thivierge v. Town of Amesbury Mayor Kezer, Assessor. Affairs
Town Clerk, Sub. the Agent of the Town

Written Testimony to supplement verbal testimony of
James N. Thivierge on the matter of "No Trespass Order" of 12/19/07

FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX

Your Honor

DEC 26 2007

to establish jurisdiction and the course of action I did enter Newburyport
district court to establish on December 24, 2007 in the afternoon before
the presiding judge. CLERK
12-19-07

First of all, I've broken no law and the facts are severely
mis-characterized and smacks of political retribution.

As a remedy I ask the court for a writ of Mandamus to abolish this order
and to stay this action, revoke or whatever is necessary to restore in
an uncomplicated matter all access to public buildings and my right of
assembly to access them in that the mayor and the agents of local
government have overreached their authority. I know this is a reflex, but
very troubling to me, political action against a fiscal critic furthered
exacerbated by the new tax rate, an unjustified water/sewer increase and
its implications on the local economy and the reduction in disposable
income for families the undue influence on rents plus the following facts
that transpired during the past six months where I was a candidate for
mayor:

No debate prior to the preliminary election; an unjustified water/sewer
increase; no questions from the audience during the final debate;
significant tax increase subsequent to the final election that amounts to
nearly three million dollars taken from the local market place, placing my
community nearly five dollars per thousand from Newburyport, six dollars

1/6

106 Friend Street, Amesbury, Massachusetts 01913 Written Testimony to supplement verbal testimony of
James N. Thivierge on the matter of "No Trespass Order" of 12/19/07

AT THE COPY, ATTEST
[Signature]
DEPUTY ASS'T. CLERK

[Vertical handwritten notes on the left margin]



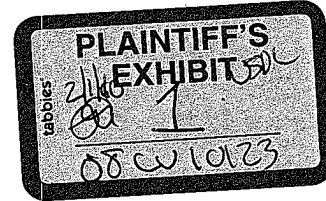
Amesbury

Mayor Thatcher W. Kezer III
Town Hall, 62 Friend Street
Amesbury, MA 01913-2884

(978) 388-8121
Fax: (978) 388-6727
Mayor@ci.amesbury.ma.us

December 19, 2007

Mr. James Thivierge
106 Friend Street, Apt. 12
Amesbury, MA 01913



NO TRESPASS ORDER

Dear Mr. Thivierge:

I have received reports from the assessor's office as well as the town clerk's office that you entered both offices yesterday, became aggressive and hostile to town employees in those offices and raised your voice to the point of frightening the employees. I also believe you entered the employee space behind the counter in the town clerk's office and approached the town clerk in a physically hostile manner. She was frightened enough to ask her fellow workers to call the police.

I am aware that you have had previous incidents at other town facilities including the public library and the town accountant's office. You have received at least one warning letter from former library director Mark Lankin and have been issued a No Tresspass Order for the library.

I cannot allow such disruptive and threatening behavior to continue regardless of your position on issues. Therefore, effective immediately you are hereby ordered not to enter upon or in to any town facility during the regular business day. You may conduct your regular town business by mail. If you have a special need to go to a town facility you must first submit a written request and receive written approval from my office. You may continue to attend town events after regular business hours providing you do not approach or harass town employees.

If you fail to heed this **NO TRESPASS ORDER** I will have you arrested and I will prosecute you to the fullest extent allowed pursuant to Massachusetts General Law, Chapter 266 section 120.

Sincerely,

Thatcher W. Kezer III
Mayor

c. Chief Michael Cronin, Amesbury Police
All town departments

- SERVED IN HAND
12/19/07 @ 4pm
- OPR'S - WRIGHT
- CHATIGNY

12.24.67
106 Friend Street
Amherst, MA 02913

(B)

that the letter
may be destroyed

I regret your
mischaracterization and
to deter you from further
defamatory writings please the
plunders that can emanate
from them injury reputation
character.

I request immediate
retraction and I plan to seek
other redress from the officers
available to members of the body
public; the purport of government
is you are aware.

A very concerned citizen

James Farmer
President

(A BAD ITARD writing Day)
done only December 24, 1967
And would of you to whom — look

9/17/2007

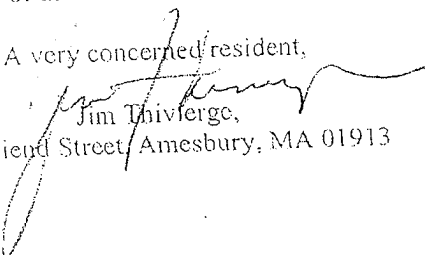
Mayor Kezer:

On the accompanying letter from Sgt. Gagnon, I, being the subject categorically reject all claims and allegations made by it and consider it an insult to have received this letter from him Friday afternoon September 14. So in order to protect my character and reputation from further assault by this department and this administration, I request under MGL chapter 66 section 10 any all documents related to the content of the sergeants letter be available for my review under this section of the statute. Given the timing of the letter, I consider this action the lowest politics and indicative of why and what I am running against unless rectified immediately.

To access the documents under the charter given the subject matter of this election, this order of "no trespass" be rescinded immediately and that the reputation and character of the targeted person has been slandered and libeled by the agents of this administration and any requisite copies cited by the correspondence be notified within the seriousness and context of the time, the day before the mayoral election within which I am a serious participant.

This action does not demonstrate sound judgment and disappoints greatly this citizen of Amesbury and of the Commonwealth of Massachusetts.

A very concerned resident,


Jim Thivierge,
106 Friend Street, Amesbury, MA 01913



00-1000-

12.24.07
106 Friend Street
Amherst, MA 01913

(B)

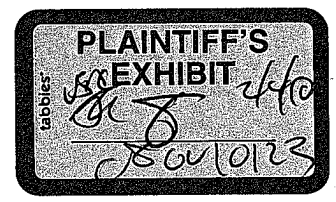
that the [unclear]
Mayor of Amherst

I regret your
mischaracterization and
to deter you from further
libelous writings plus the
plunders that can ensue
from them injuring reputations
doubtless.

I request immediate
retraction and a plan to reach
other readers from the offices
available to members of the body
public, the purport of agreement
is you are aware.

A very concerned citizen

James [unclear]
Resident



(A BAD ITARD writing Day)
done forly December 24, 2007
Not mail of you to whom - had

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)
JAMES THIVIERGE,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 09-10123-PBS
)
TOWN OF AMESBURY,)
)
Defendant.)
_____)

JURY INSTRUCTIONS
February 4, 2010

Saris, U.S.D.J.

MEMBERS OF THE JURY:

You have heard the evidence and the arguments in this case. It is now my duty to instruct you on the law that you must follow and apply. When I have finished, you will begin your discussion with each other -- what we call your deliberations.

To help you understand and remember these instructions on the law, I will divide them into three main parts: first, general instructions intended to guide you throughout your deliberations; second, instructions about the complaint and about the law that determines what the plaintiff has to prove in this case; third, some additional general instructions about procedures during your deliberations.

