

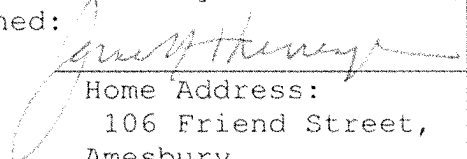
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2 PRO SE
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3

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

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

13 Defendant -Appellees

Dated this 15th day of November,
2010 Signed:



Home Address:
106 Friend Street,
Amesbury,
MASSACHUSETTS 01913
James N. Thivierge
Citizen of the
Commonwealth of
Massachusetts, and
the United States of
America

20 *Amended*

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

22 Corporate Disclosure Statement

23 JAMES N. THIVIERGE
PLAINTIFF - APPELLANT - PRO SE
24 106 FRIEND STREET,
AMESBURY, MASSACHUSETTS 01913
25 978-517-7163

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5 544, page 18
6 [Bennett v. Norban, 396 PA 94, 1515 A2d 476]..page 19
7 [City of Canton v. Harris (S.Ct 1989)]... page 27 & 28
8 City of Cambridge v. Commissioner of Public Welfare, 357 Mass. 183,
9 257 N.E. 2nd 782(1970).. page 27
10 Chisom v. Poemer, US LA 1991, 111 S.CT 2354, 501 us 380, page 18
11 City of St.Louis V. Praprotnik (S.Ct.1968) page 28
12 Commonwealth v. Hudson, 315 Mass. 335, 52 N.E. 2nd 566 (1943).. page
13 27
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16 2d 510]..page 26
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24 [Pembaur v. Cincinnati (S.Ct 1986)]..page 28
25 [Reynolds v. Sims 377 US 533, 554 S.Ct 1362]..page 19
26 [Roybal v. Albuquerque, CV No. 85-1616 HB, UNITED STATES DISTRICT COURT FOR THE
27 DISTRICT OF NEW MEXICO, 653 F. Supp. 102; 1986]. ..page 25
28 [Schlager v. Beard, No. 10-2184, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 2010
29 U.S.]..page 25
30 Young v. Secretary of health and Human Services - 957 F.2nd 386
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34 P.L. 88 - 352, 42 USC 1983, The Civil Rights Act of 1964
35 P.L. 102 - 166, 42 USC 1973, 1973a, 1973c, The Voting Rights Act of
36 1965 - Public Law Voting rights Act of 1965 -
37 20 USC s. 236, s.2701 Elem.and Second.Education Act-1965 P.L.89-10
38 20 USC 72, MUSEUM AND LBRARY SERVICES
39 20 USC 9121 LIBRARY SERVICES AND TECHNOLOGY ACT
40 42 USC 2000d, discrimination in federally assisted programs
41 42 USC 2000d-1 federal authority and financial assistance
42 42USC S. 1758 Dept. of Agriculture, School Lunch Program
43 P.L.108-81 MUSEUM AND LIBRARY SERVICES ACT OF 2003,20 USC 9101

1 P.L. 93 - 383 Housing and Community development of 1974 acts
42 USC S. 3001 P.L. 89 - 73 Older Americans Act of 1965
2 P.L. 111 - 117 fy 2011 appropriation Labor, ... Education
P.L. 111 - 5 2009 (AMERICAN RECOVERY AND REINVESTMENT ACT):
3 Help America to Vote Act of 2002 (HAVA)

4 5 USC section 706 Administrative Procedures Act, Scope of Review,
...interpret constitutional statutory provisions: (2b) contrary to
5 constitutional right, power, privilege or immunity;

6 P.L. 93 - 383 Housing and Community Development of 1974 acts - the
authorization
7 P.L. 111-117 One of the twelve annual appropriation's laws by
Congress;

8 Table of Authorities: Regulations

9 P.L. 93 - 383 Housing and Community Development of 1974 acts - the
10 authorization
24 CFR 570.486 - LOCAL GOVERNMENT REQUIREMENTS
11 (2) ENSURE THAT CITIZENS WILL BE GIVEN RESONALBE AMND TIMELY ACCESS
TO LCOAL MEETINGS, INFORMATION, AND RECORDS RELATING TO THE UNITS
12 OF GOVERNMENTS PRPOSED AND ACTUAL USE OF cdbg FUNDS.

13 24 CFR 570.508, CDBG, subpart j, grant administration
public access to records;

14 24 CFR 85.442(f) recipients shall provide citizens with reasonable
15 access to records regarding the past use of CDBG funds consistent
with applicable state and local laws regarding privacy and
16 obligations of confidentiality;

17 20 USC 72, MUSEUM AND LBRARY SERVICES. Section 9134 state plans, b6
"provide assurances that the state will comply"
18 20 USC 9121 LIBRARY SERVICES AND TECHNOLOGY ACT

19 Massachusetts General Court: Acts and Resolves: chapter 131 of the
acts of 2010, the general appropriations act for the fiscal year
20 2011, THE ANNUAL BUDGET for the Commonwealth of Massachusetts;

21 Executive Office of Housing and Economic Development
Housing and Community Development
22 Accounts funding contract - 7004 - 3037: Federal Grant spending

23 706 CMR 28.00 - 50.00 Housing and community Development
Assurances of Compliance
24

25 Table of Authorities: CONSTITUTIONAL ISSUES

1 Declaration of Independence (1776) - Access the Public Record
" and distant form the depository of public records."

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

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

5 Article 1, section 8, "to make all laws necessary and proper for
6 carrying into execution the foregoing powers;" section 9 clause 8;
7 "no money shall be drawn from the Treasury but in consequence of
appropriations made by law;

8 Article 2 "the duty that laws are faithfully executed;

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

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

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

16 The bill of rights ratified by the several states on December 15,
17 1791. The first 10 amendments to the Constitution proposed to the
18 legislatures of the several states by the First Congress September
25, 1789, 1 STAT 97.

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

21 Tale of Authorities: OTHER AUTHORITIES

22 The Writings of Madison: Letter from Madison to Jefferson October
17, 1788; Speech in Congress proposing Constitutional amendments
23 June 8, 1789 Remarks in Congress on proposed Constitutional
amendments August 15, 1789.

24 The Federalist Papers, written by Madison, Jay, and Hamilton(1788)
25 #69 & #73 - Federalist 69 and 73, AND OTHERS: Number 69, Written
by Hamilton - Subject the propose executive But that it would be

1 precisely the same with that of the governor of Massachusetts,
2 whose constitution, as to this article, seems to have been the
3 original from which the convention have copies; Number 73, Written
4 by Hamilton, *The chief magistrate and the judiciary* - I have in
5 another place remarked that in the convention, in the formation of
6 this part of their plan, has departed form the model of the
7 constitution of this state in favor of that of Massachusetts.

8 Amesbury Home rule charter 1996, section 1-4, 2-2, 8-8. all three
9 sections section cited in the December 24 2007 brief to the
10 Newburyport district court, then the next week to the Newburyport
11 Superior Court

12 Black's Legal Dictionary, Ninth Edition, West Publishing, St. Paul
13 Minnesota

14 STATEMENT REGARDING ORAL ARGUMENT

15 Plaintiff - Appellant requests oral argument.

16 STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

17 This is an appeal from a final judgment entered by the United
18 States District court for the District of Massachusetts (Saris,
19 P.B.). The judgment entered on February 8, 2010. The Plaintiff
20 filed a notice of appeal on March 9, 2010. The Court has
21 jurisdiction with respect to claims under the United States
22 Constitution and 28 USC SECTION 1983.

23 STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

24 The Plaintiff-Appellant, JAMES N. THIVIERGE, raises the following
25 substantial and procedural issues within his appeal to regain full
access to public facilities, forums and functions versus the Town
of Amesbury et.al.: whether the Plaintiff-Appellant, JAMES N.
THIVIERGE, Constitutional due process rights and equal protection
under the law rights under the fourteenth amendment were upheld
throughout this process, especially in the removal of the case from
the Lawrence district court where the Plaintiff-Appellant, JAMES N.
THIVIERGE, writ of mandamus was sent to stay the order of the "no
trespass letter" of December 17, 2007 and allowing the Plaintiff-
Appellant's access to the facilities having done no wrong,
committed no crime, and the town' action in violation, stated, in
his brief of the civil rights Act of 1964, title VI; and that the
focus of this case changes from title VI to Title VII: and the
seventh amendment to the United States Constitution and "trial by
jury," the facts I presented to the Newburyport Superior Court were

1 not tried by the jury, and a switch occurs; whether during the time
2 frame from December 17, 2007 and the presidential preference
3 primary held on February 5, 2008 did "the no trespass order" and
4 its requirement to seek permission "abridge the plaintiff-
5 appellant's, JAMES N. THIVIERGE, right to vote" under the Voting
6 Rights Act of 1965; defendant motion for summary judgement denied
7 the plaintiff appellant believes he was dispositive, immediately
8 prior to the jury trial the plaintiff-defendant's was dispositive
9 and because of the time frame was not allowed to seek summary
10 judgment; that during the jury trial the plaintiff-appellant's,
11 JAMES N. THIVIERGE, ability to enter evidence on his behalf on two
12 occasions, the annual town report, a public record, the acceptance
13 of municipal council rule 20, and the acceptance of grants plus
14 enter into evidence "authorizations" that promote the
15 appropriations that fund federal financial assistance seriously
16 affected the outcome of the verdict for the Plaintiff-Appellant,
17 James N. Thivierge, and a civil rights violation under the 1964
18 civil rights act; and that during the jury trial the plaintiff-
19 appellant, James N. Thivierge, questions both the jury instructions
20 and jury questions; and that the return of "inconsistent verdict"
21 one the jury questions demonstrates the aforementioned; and the
22 judges ruling returning the plaintiff-appellant to the library and
23 including a policy on sexual harassment policy demonstrates my
24 civil rights have been violated; that the plaintiff-appellant has
25 libel and slandered during this ordeal; that under the 1964 civil
rights Act of 1964 the plaintiff-appellant believes that due to
lack of training of staff on this issue, that the executive, the
mayor acting on behalf of the municipal corporation, and failing to
trains his employees to recognize what sexual harassment is and
what it is not, violates the Amesbury Home rule charter, Article V
of the Massachusetts Declaration of Rights, and that of the Ninth
amendment of the United States Constitution, and the unenumerated
right of the Accountability of our public officials and places the
municipality liable for its actions; and finally that the mayor and
former mayor acting as a library consultant during this time
conspired and damage the plaintiff-appellant's reputation and
character with the written libels and slanders noted above that
emanate from First amendment, the Fourteenth amendment, and that
the mayor as the executive office of the municipal corporation
under second 2-2 is accountable and that its actions violates the
Declaration of Rights of 1780 of the Massachusetts Constitution as
outlined in my brief to the Newburyport Superior Court December 26,
2007 and other issues.

24 The plaintiff - appellant files this appeal under rule within 30
25 days of this judgment.

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STATEMENT OF THE CASE

The Plaintiff-Appellant, James N. Thivierge, files a civil rights action citing the 1964 Civil Rights Act Title VI that emerges 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.

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

The case was sent to Magistrate Judge Dein for mediation where a mediated agreement allowing the plaintiff access to all buildings except the library agreed to by both sides, with the understanding that there was no blame, absolutely no culpability by the plaintiff for he has committed no wrong but merely goes about his business as he has since the nineteen fifties(1950's)

1 with accommodation for modern improvements like using the
2 computer and internet. Judge Saris orders adoption of the
3 mediators "Report and Recommendation" July 22, of 2008.

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

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

19 After the Judge orders the adoption of the Magistrate Judge Dein
20 recommendation on July 22, 2008 allowing access to all public
21 buildings with the exception of the library series of motions
22 transpire on discovery, issues to the brought to the jury, and
23 witness lists,.

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

1 The Plaintiff-Appellant files his Notice of Appeal on March 9,
2 2010.

3
4 STATEMENT OF THE FACTS

5 The Plaintiff-Appellant, James N. Thivierge, is a lifelong resident
6 of Amesbury Massachusetts, born in 1946, he spends the first five
7 years of his existence living across the street from both the
8 police station/district court and the fire station. His family
9 moves to a house several streets over for the next 16 years. He
10 attends the parochial grammar school, Ecole du Sacre Coeur, Sacred
11 heart School in English, Amesbury high school, while in attendance
12 and chosen for Boys State, president of his class twice, plus
13 president of the student council body and graduates in June of
14 1964.

15 With his morning paper route in grammar school and briefly in
16 high school, he earns enough money to pay for his first year of
17 college.; and the rest as a result of summer work at the state
18 beach thru gubernatorial appointment via recommendations of the
19 local representative and senator unbeknownst plus doing special
20 delivery for four years for the United States post Office and a
21 couple of high school coaching positions in football and
22 basketball. He graduates from a private catholic Merrimack College
23 in North Andover with a degree American Studies four years later in
24 1968. He enlists into the United States Navy like his uncles and
25 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.

He enters the United States Navy in May of 1968 in a 120 day delay
program and for four years serves first at Great Lakes training
Center Illinois, then Corry Field, Pensacola Florida, working in a
post office and playing softball and football on championship teams
all over the southern part of the country, and recommended for
officer's training school to Washington; goes to a navy training
center for data processing in San Diego, California after
qualifying for both computers and chinese; and assigned to two
destroyers tenders the USS Tidewaters AD-31 in Norfolk Virginia,
and the USS Cascade AD-16 in Newport, Rhode Island and later
Naples, Italia where he worked as a night computer operator
generating operations reports for the sixth fleet in Mediterranean
sea 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

1 and museum discount passes compliments of the Italian government
2 afforded to us and while on leave throughout Europe from 1971 and
3 1972 which enabled the visitation of 26 countries. I receive an
4 Honorably Discharged with Good Conduct and a National Defense Medal
in 1972 at my last duty station, a Vietnam-era veteran. AS a
result of my stay in Europe I speak French, Italian, and enough
Spanish to get around Spain.

5 After my discharge in Napoli, I traveled around Europe for almost
6 four months and after my return to the United States in December I
7 went to work at Finast Corporation home office, Somerville
8 Massachusetts with oversight of sixteen personnel and evaluation as
9 a night supervisor of data preparation while earning prerequisites
10 for graduate school at Northern Essex Community College in
11 Haverhill, Massachusetts during the daytime. I ran for Amesbury
12 town meeting member in 1973 and for the next twenty three years was
13 a member of the town meeting and spent nine years on the by-law
14 committee. In 1974 a member of the school committee member,
15 working in Newton Massachusetts selling banking equipment and
16 computers. I entered state service from a civil service exam at
17 the state department of corporations and taxation as a junior
18 programmer in the programs and analysis section, and participated
19 in the implementation of the Sudbury Decision, 100 percent
20 equalized valuation and left as a senior programmer. I served as
21 an SEIU Local 250 elected union steward, carried grievances, and
22 eventually left for the state banking commission in 1978 where I
23 began as a data processing manager and left to start my own entity
24 in 2001 as a Director of MIS Services.

25 While working at the division of banks and loan agencies, I had
managerial responsibilities such as employee supervision
evaluation, analysis and design of computer programs and systems in
addition to training with equipment and personnel at various times
of my twenty -two years with the agency serving on a state-wide
vendor training selection committee on behalf of my agency plus
accepting a state wide performance award for a consumer assistance
system we put in place; however, primary responsibility initially
was to produce the annual report and statement condition for the
state's banking industry and meet the statutory deadlines in order
to keep abreast public policy makers both executive and legislative
of its condition for the next two decades plus. This time frame
parallels my appointment on the town's finance committee and also
my election to the board of selectmen for five three year terms. I
became President of the county selectmen's association and
representative my town on the county advisory board serving on its
executive board. My committees oversaw the county courts and
registries of deeds budgets. In addition, I served for a term as
the president of the Massachusetts Federation of Franco-American
clubs with 60,000 members at the time. At my own club, the

1 Lafayette Naturalization Club established in 1896, I served on the
2 naturalization committee helping those who sought our assistance to
3 become citizens of these United States, working with immigration
4 and naturalization getting the forms, books, need be; in addition,
5 I attended upon invitation a ceremony at Fanueil Hall.

6 My education includes a Master's degree in Public Administration
7 from Framingham State, now, University with numerous other courses
8 work related including the Federal Reserve and FDIC in Washington
9 and Boston, personnel training within state government in many
10 different area, plus many credit in life long learning from
11 Northern Essex Community College in Haverhill Massachusetts. I
12 basically studied to a town manager and whether the laws making me
13 certifiable as a superintendent of schools because of my managerial
14 background are still have force that poses possibilities, but not
15 in my home town because I applied for assistant superintendent,
16 denied, and neither did substitute teacher. I have taught college
17 courses in both state and local government and relational database
18 in Boston for the New England School of Finance where at the time
19 the chairperson of the Board was the President of the local Federal
20 Reserve Bank; and at Quincy College, one of the few municipal
21 colleges in the country. And I earned a Bachelor's degree in
22 American Studies from Merrimack College in North Andover
23 Massachusetts.

24 In July 2001, I left the division of banks and loan agencies,
25 banking, to start my own entity ThinkTwoThousandPlus dedicated to
generating fiscal savings and increasing efficiency, and in doing
so, and throughout this time frame of involvement in town issues
and affairs continues to maintain his participation via public
comment, letters to the editor, petitions filed under article 19 of
the state constitution and free petition etc. Although, the local
government changes structurally to a mayoral-council from and in
August of 1996 and with my term as a selectmen due to expire in
1998, truncated by the ballot action, my interest takes a citizens
perspective using the municipal council rule 3.5a requiring
citizens comment.

From the July of 2001, my entity Think Two Thousand Plus while not
profitable does develop much legislation and software towards the
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 on school buses while underway except in an
emergency. This concept has crossed cross the Mississippi river
hopefully it will become national. My entity conducted seminars
and lost much money, and even predicted this economic downturn in
December 2005. I sent out over two hundred letters advertising a
seminar to show municipal entities that they can contend this

1 impending downturn not knowing about credit default swaps with no
regulation.

2 My issues with town, the municipal corporation of Amesbury(1668)
3 become prominent for example with the traffic tickets. They begin,
4 I am in traffic court in Newburyport regularly, then housing court
5 in Lawrence, and land court checking on things in Boston, traffic
6 appeals court submitting a brief to the Middlesex county office in
7 Somerville, now Center Plaza Boston, small claims court and
8 district, superior court in Newburyport, United States District
Court, and now the United States Appeals Court to date, both in
Boston. In and around 2005 when a third mayoral administration
takes hold and the outgoing mayor becomes a consultant to the local
library with a relatively new head librarian and a changing staff.

9 Since 1999, using my experience on the dais, the ballot box and
10 the public comment, a three minute portion of the municipal council
11 meetings, once a month, and occasionally at their finance committee
12 meetings, I attempted to act as knowledge opposition to these local
13 policies and policy makers. The second mayor worked on my behalf
14 in 1999 election prior to his election in 2005 and undercut me at
15 the primary, and I lost the final by a couple hundred votes. He
16 also served, as I said, as a consultant in the library after
17 relinquishing his position in 2005 in to the next and beyond. Both
18 first and second mayor originate from not locals (200 million
without precedent bonding later) and the present mayor comes from
the next town, and is their legacy, preserves the approach and
expense onto to the body politic, and I believe work in concert to
maintain their hold on the fiscal policy process. My real problems
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
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
other at Northern Essex community College. Theophilus Parsons is a
resident of Newburyport marries a Greenleaf, a judge's daughter, in
the mid eighteenth century writes the Essex Result and is credited
with writing the Conciliatory Amendments for John Hancock during
the ratification of the United States Constitution, and a future
Chief Justice of the Supreme Judicial Court of Massachusetts. His
law students in Newburyport include: Rufus King, a member of the

1 Convention in Philadelphia, committees on style and detail in 1787,
2 and later presidential candidate, incidentally Alexander Hamilton
3 is godfather of his firstborn; and President John Quincy Adams,
4 later a congressman who fought to save the right of petition with
5 the assistance of John Greenleaf Whittier. He is very prominent
6 with John Adams in the writing of The Massachusetts Constitution
7 and the Declaration of Rights. Adams asks Parsons to be his
8 Attorney General after he rises to President. So, it came as a
9 great surprise to me that this occurred.

10 With no wrong doing, and the public library having no real policy
11 on title VII issues, this situation comes to a head in the December
12 2007 with the "no trespass order" and my entrance to the
13 Newburyport District Court seeking assistance on December 24, 2007
14 and the filing of a writ of Mandamus in the Newburyport Superior
15 Court. What I filed with the court, and what sent to Lawrence
16 Superior Court was a writ of mandamus, to stay the action by the
17 town of Amesbury and its agents, revolves around Title VI of the
18 1964 Civil Rights Act, the year of my graduation from high school.
19 What is heard by the jury centers around the Title VII issues and
20 sexual harassment. I am back in the public library by the judge's
21 ruling and what I brought to the superior court is still
22 outstanding.

23 How can I have access returned to the public library, and not my
24 rights be violated under title VI, of the 1964 Civil Rights Act
25 because of the municipal corporation's actions?

26 Due Process and Equal Protection
27 SUMMARY OF ARGUMENT: (rewrite)

28 The District Court did err when it did not notify the Plaintiff-
29 Appellant of the Removal Hearing in a timely fashion:
30 The Plaintiff-Appellant, JAMES N. THIVIERGE, did not receive any
31 timely notification on any hearing on this matter from Lawrence
32 Superior Court on this matter and responded only after the fact
33 when he became aware. The lack of this notification affects the
34 plaintiff-appellant's due process rights and equal protection under
35 the law and the Fourteenth Amendment of the United States
36 Constitution. It appears from my records that the notification
37 went to town hall. I have no record.

38 Argument:

39 DE Novo Standard of Review

40 Discussion of the Issues

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

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

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

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

20 Standard of Review DE Novo Review
21 Discussion of the Issues

22 The Plaintiff-Appellant, JAMES N. THIVIERGE, affecting both his
23 DUE PROCESS AND EQUAL PROTECTION rights under the Fourteenth
24 Amendment. The basic function are due process is to afford " an
25 opportunity too be heard... at a meaningful time in a meaningful
manner," thereby promoting fairness and accuracy in the resolution
of disputes.[Fuentes v. Shevin(S.Ct1972)]. The Plaintiff-
Appellant, JAMES N. THIVIERGE, was not heard on this issue.

1 What emerges to the jury trial on February 1 2010 thru February 4
2 2010 is not what the Plaintiff-Appellant, James N. Thivierge, files
3 in Newburyport Superior Court December 27, 2007 over two years
4 earlier. I filed a writ of mandamus to stay the "no trespass"
5 basically because I thought it was fraudulent and it was
6 ultimately. Effectively, what I brought to the Newburyport
7 Superior Court on December 24, 2007 is still outstanding. I am
8 aggrieved having done no wrong but show at meetings for public
9 comment.

10 Voting Rights

11 SUMMARY OF ARGUMENT

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

14 The United States District Court in the Jury Trial did not find or
15 act on within the verdict the question of whether the Plaintiff-
16 Appellant, JAMES N. THIVIERGE, Town of Amesbury et. al. "abridge
17 his right to voting rights" and violate the Voting rights Act of
18 1965, and the Fifteenth Amendment plus Fourteenth amendments to the
19 United States Constitution with the "no trespass letter" by
20 establishing prerequisite or a legal servitude as defined by
21 Black's Legal Dictionary. "On Tuesday, the fifth day of February
22 2008 from 7:00AM TO 8:00pm to cast their votes in the Presidential
23 Primary for the candidates of political parties for the following
24 offices: Presidential Preference for this commonwealth; State
25 Committee Man Senatorial District; State Committee Woman Senatorial
District; Ward or Town committee City or Town. Given under the
hands this day of 8th day of January, 2008. Municipal Council of
Amesbury." An excerpt from the town report, municipal council
section

Argument:

Standard of Review

- De Novo

Discussion of the Issues

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

The Town of Amesbury's via their administrative agent, the mayor,
within his written "no trespass letter" states that to gain
entrance, one has to seek permission in order to enter town
facilities. The mediated agreement between the Plaintiff-
Appellant, JAMES N. THIVERGE, does not occur till late summer when
the Honorable Judge Saris signs the agreement for the Plaintiff-
appellant to regain access till otherwise agree or determined. I
might add the current situation where the Plaintiff-Appellant,

1 JANMES N. THIVIERGE, does not have access to town facilities other
2 than the library as per the Judge's ruling from the jury trial.
3 From December 17 2007 till the mediated agreement the Plaintiff-
4 Appellant, does not have access to the town hall where the
5 Presidential Preference Primary is held and also the votes are cast
6 for ward or town committee man ward or precinct. I reside in
7 precinct or district six in the town of Amesbury and have been on
8 the Presidential primary ballot since 1976. In 2008 my name does
9 not appear due to the "no trespass letter" and the prerequisite to
10 request permission. On February 8, 2008, I entered the town hall
11 in the afternoon and cast my presidential preference ballot and
12 wrote my name in for town committeeman. Had there been no
13 restriction or prerequisite as per the "no trespass letter" my name
14 would have been on that ballot as it has since 1976.

15 Presently, two elections will transpire I will vote under the
16 Judge's ruling which does not allow me into the buildings other
17 than the library as I understand the ruling. The town of Amesbury
18 abridges my privilege, the right to vote, under Fourteenth
19 Amendment, and perhaps the Nineteenth Amendment because I am man,
20 and maybe the twenty-sixth amendment being 64 years old, you can
21 never can tell? Nonetheless, the "no trespass letter" is a
22 prerequisite that Black's Legal dictionary defines as a legal
23 servitude. I might add that the Plaintiff-Appellant, JAMES N.
24 THIVIERGE, is a resident of the Town of Amesbury and registered for
25 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. In, Harman v. Forssenius
USVA 1965, 85 S.ct 1177, 380 US 528, voting is a fundamental right,
any restriction strikes at the heart of representative government.

In Brooks v. Nacrelli, the plaintiff alleges intimidation and that
the his First Amendment Right of free expression, the privileges
and immunities and equal protection of the Fourteenth amendment
come into play and that certain activities violate 5 USC 1501. 42
USC SECTION 1971 PROVIDES THAT "All citizens of the United States
who are otherwise qualified by law to vote at any election. It is
clear that the Constitution of the United States protects the
rights of qualified citizens to vote in state as well as federal
elections. [Reynolds v. Sims 377 US 533, 554 S.Ct 1362] The
Plaintiff-Appellant having done no wrong and beset with this
"order" and the result of the jury trial not dealing with the voter
rights questions still has right to the voting privilege abridge in
a sense with both a federal primary and final elections for
Congress. What makes it different from some of the other First
Amendment rights in addition to freedom of expression, I cite in my
initial brief before the Newburyport Superior Court and the Right
of Petition which was and is also abridge by the action of the Town

1 of Amesbury and the Judge's ruling from the jury trial as I
2 understand it, presently. I cannot file a petition of any kind, nor
3 get a birth certificate or a fishing license, nor receive notary
4 services, nor file a nomination paper for the Attorney General of
5 the Commonwealth for re-election without the police showing up
6 because I do not have permission. The Defendant-Appellee's, the
7 Town of Amesbury et al., "no trespass order" is a form of
8 intimidation from the local public discourse that keeps the
9 Plaintiff-Appellant from the public record, as well as making
10 another person so affected "think" about whether they can vote
11 affecting the privilege of the franchise or how they interact.
12 Viewed wrongly by the body politic, can affect participation and
13 ultimately representation its quality and quantity aside from
14 constraining "liberty and the pursuit of happiness" especially for
15 those who have made their interests in government their life's
16 work, like me, who do it with the best interests and intentions of
17 their actions, perhaps with a little chicanery at times, but in the
18 promotion of the public and common good. It was the first time in
19 32 years my name did not appear on the Presidential Preference
20 Primary ballot since 1976 the 200th anniversary of the Declaration
21 of Independence; and that the presidential preference primary
22 ballot for precinct democratic town committee was tailored for the
23 sitting mayor, municipal council president and committee treasurer
24 or secretary and others members forced to write in their names and
25 the Plaintiff-Appellant, JAMES N, THIVIEREG, abridge from entering
the town hall without permission and unable to sign the nomination
paper for town democratic member for the presidential preference
primary February 8, 2008.

15 In Hadnott v. Amos, US ALA 1969, 89 S.Ct 1101, 395 US 358, states
16 this amendment guarantees the right of people regardless of their
17 color or political persuasion to cast their votes effectively.
18 Allen V. State Bd. of Elections, USVA 1969, 89 ST.CT 817, 393 US
19 544, implementing the 15th Amendment with the voting rights Act of
20 1965 RIGHTS Act of 1965. it also "prohibits voting qualifications
21 or pre-requisites in a manner resulting in a denial or abridgement
22 of the right to vote." The mayor's "no trespass letter" did so.
23 Chisom v. Poemer, US LA 1991, 111 S.CT 2354, 501 us 380.

20 Section 2 of the Voting Rights Act of 1965 prohibits any practice
21 or procedure.

22 **Trial by Jury - Evidence**
23 **2-2-10 page 14 authorizations**

24 **SUMMARY OF ARGUMENT:**

24 The District Court did err when it did not allow consideration of
25 the following evidence:

25 The Plaintiff-Appellant, JAMES N. THIVIERGE, attempted to place
into evidence two key documents that were key components toward

1 illuminating the jury on my behalf: the town reports that contain
2 their actions in promulgating policies and acceptances of grants of
3 federal assistance and the "authorizations" that in turn promote
4 the annual congressional appropriations, the public laws, that
5 contain federal financial assistance for the fifty states and the
6 twenty thousand potential localities across these United states and
7 351 communities within the Commonwealth of Massachusetts.

8
9 Argument:

10 Standard of Review

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

16 Discussion of the Issues

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

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
primaries.

The trial judge did not articulate the reason or reasons for the
ruling. But, it may be that the trial judge did not realize that
these two pieces of evidence offered to the jury were in fact
critical by lack of understanding of each that is in a loose sense
"an abuse of discretion." Many people do not know or have ever
seen a town report; you expect to know of its purpose and relevancy
as a public record. So too, the importance of "authorizations"
that spawn appropriations and that all appropriations must be in
accordance with law and the Constitution Article 1, section 9
clause 7. Federal Assistance monies must be appropriated. The
testimony of library employees and the mayor center around a grant
they received for new computers under the Library Services and
Technology Act which emanate from the Museum and Library services
authorization Act of 1976 and subsequent re-authorizations. The
Amesbury public library programs funded by grants such as
"EqualAccess," "Mother Goose" and "ThinkAhead" all have assurances

1 they must subscribe and the Civil Rights Act of 1964 is one of the
2 many; the commonwealth of Massachusetts must subscribe to these
3 same set of assurances not only by statute but also by the code of
4 federal regulations. These assurances are contractual and in the
5 case of the commonwealth of Massachusetts it is the Attorney
6 General who signs the agreement. In cities and towns it the mayor
7 and the chairperson of the board of selectmen as I once was and/or
8 the president of the council under some of the new structural
9 arrangements. [AINS, INC V. US, CL. 2002, 56 Fed.Cl 522] deals with
10 appropriations clause of the Constitution, Article 1, section 9, clause 7,
11 and does not prohibit the use of special funds by an agency pursuant to an
12 authorization or an enabled statute Without a special appropriation act. [III
13 RT 31 2-3-10 page 31] The Museum and Library services act is the
14 authorization [20 USC 72, MUSEUM AND LIBRARY SERVICES. Section 9134
15 state plans, b6 that "provide assurances that the state will
16 comply." These monies in Massachusetts are appropriated via the
17 general appropriations act chapter 131 of the acts and resolves for
18 2010. The attorney general provides assurance that the state will
19 comply and the cities and towns with their own set of assurance.
20 Both sets include title VI of the 1964 Civil Rights Act, the state
21 adheres according to the set of code of federal regulations
22 included in the agreement.

23 [IV RT 128 2-4-2010]

24 2-4-10 day 4 page 128

25 SUMMARY OF ARGUMENT:

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

Standard of Review

Not DE Novo

Discussion of the Issues

It is my understanding having experienced this jury trial that
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
to the subsequent versions; the jury questions too many sets, it is
understandable that the jury returned an "inconsistent verdict."

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

20 Over the course of the jury trial I nearly objected to every
21 statement of the library staff. Perjury may not be out of order
22 from my standpoint. The district court did NOT err issuing the
23 ruling allowing the Plaintiff-Appellant, JAMES N. THIVIERGE, back
24 into the library for he has done wrong, and the action was wrongly
25 based; however, it did not go far enough and widen it to make the
ruling applicable to all facilities, public functions and forums.
Aside from that point, in Graham v. Henderson 89 F3rd 75 both the
right of assembly and petition were impeded by the issuance of the
"no trespass letter and order." Both issues were both cited in the
initial 12.24.2007 petition to the district and superior courts in
addition to title VI of the 1964 Civil Rights Act which plays a
significant part in every assurance of compliance contract for
federal financial assistance. Title six of the civil rights Act of
1964 prohibits discrimination under any project or activity
receiving federal financial assistance. Amesbury is a political
subdivision of the commonwealth of Massachusetts. Commonwealth v.
Hudson, 315 Mass. 335, 52 N.E. 2nd 566 (1943) and it receives nearly
three million in 2009, the last figures for the municipal
corporation; the commonwealth of Massachusetts receives nine
billion in federal assistance, grants, and reimbursements.. both
governmental stratas are subject to the assurance of compliance, a
contract, which include the aforementioned the 1964 civil rights
Act Title VI. The Attorney General of the Commonwealth signs on
behalf of the commonwealth.

Libel and slander
SUMMARY OF ARGUMENT:

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

12 Argument:

13 Standard of Review - DE Novo

14 Discussion of the Issues

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

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

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

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

1 words, the oral publication, can injury reputation and
2 possibilities all over this country and beyond, creating a record
3 difficult redact.

4 Municipal Conspiracy

5 SUMMARY OF ARGUMENT:

6 Under 42 USC 1981 "All persons under the jurisdiction of the United
7 States shall have the same right in every state and territory.....to
8 the full and equal benefit of all laws and proceedings for the
9 security of persons and property." Section 1983 covers the
10 deprivation rights, privileges or immunities secured by the
11 constitution and laws." Section 1985 revolves around the
12 conspiracy to interfere with civil rights when and if two or more
13 persons in any stat or territory conspire...for the purpose of
14 depriving, either directly or indirectly any person or class equal
15 protection of the laws, or of equal privileges and immunities under
16 the law....etc. It is no coincidence that the intention was to keep
17 me out of public facilities forever. It involves the a number of
18 staff appointed by the mayor, the police thru the use of the
19 incident reports which I have never seen before the town's
20 discovery; since then I have learned that anyone can file one but
21 not unless your encourage or told.

22 Argument

23 Standard of Review

24 DE Novo

25 Discussion of the Issues

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

The former mayor did become a carry over paid consultant to the
current mayor, the same person who under cut me in 1999 election
which I barely lost and under whom this whole situation begins;
secondly, the official police incidents that they refer during the

1 trial are with the cooperation of the police department who gave
2 all these traffic tickets, depleting income and time and who is to
3 say; the current mayor is the legacy of first and second mayors,
4 all of which I contended in the election process, the highest form
5 of free speech.

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

13 I state that there was a conspiracy by three administrations some
14 more, some less, with and thru, the power of the "corner office"
15 from the beginning of 1999 thru the end of the jury trial February
16 4,2010 to keep a most knowledgeable, informed, interested, educated
17 and experienced at the local, county and state level out of
18 government some 200 million dollars later in unprecedented
19 financing with innumerable other questionable opaque practices and
20 in doing so conspired and violated my civil rights under 42 USC
21 1985. [Roybal v. Albuquerque, CV No. 85-1616 HB, UNITED STATES DISTRICT COURT
22 FOR THE DISTRICT OF NEW MEXICO, 653 F. Supp. 102; 1986].

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

26 I am back in the library thru the Honorable Judge's ruling;
27 however, I am still not allowed into the other public buildings and
28 unable to participate in public functions within until this is
29 clarified plus they receive federal financial assistance monies by
30 grant request for library programs. I have done no wrong,
31 committed no crime but be a participant in the public process thru
32 public comment allowed by the Amesbury Home Rule Charter 3.5(c),
33 and the election process etc. The subject of my initial brief on
34 12/26/2007 to the Newburyport Superior Court is the request for a

1 writ of mandamus to stay the action, that request is still
2 outstanding! It cites the violation 1964 Civil Rights Act one of
3 the assurances they must as municipal corporation comply; so too,
4 these same assurances including the 1964 Civil Rights Act that need
5 compliance by the state to the federal government are agreed to by
6 the Attorney General of the commonwealth of Massachusetts. They
7 cannot make these allegations when they do not know what constitutes
8 sexual harassment. I have taken the course four times: once with
9 the division of banks; another the state personnel department
10 breakfast series and twice in graduate school prior to graduation
11 in 2002 from, now, Framingham State University, the college
12 established in 1839, in Employment Law and Personnel Administration
13 as part of my Master's of Art's degree in Public Administration. I
14 knew what is was, and what it was not! My injury, I am ad
15 pauperis, my house foreclosed, and with debts largely due in part
16 to this proceeding to clear my name and restore my reputation.
17 This action filed December 24 at the state district court then the
18 day after Christmas, the first work day after December 26, 2007 the
19 Superior Court both of Newburyport Massachusetts.

11 ACCOUNTABILITY

12 SUMMARY OF ARGUMENT:

13 The Honorable Judge denying the defendants summary judgement cites
14 in her opinion the Declaration of Rights of the Massachusetts
15 Constitution, the Plaintiff-appellants uses this same Declaration
16 of Rights of the Constitution of Massachusetts and the Article V
17 because this case does center around the Ninth amendment of our
18 United States Constitution "those unenumerated powers" not
19 mentioned in the first eight of the bill of rights. The issue(s)
20 which I bring is that off accountability cited in the 5th Article of
21 the "Part the First," A Declaration of Rights of the Inhabitants of
22 the Commonwealth of Massachusetts.

18 Argument:

19 Standard of Review - DE Novo

20 Discussion of the Issues

21 "The mayor shall cause all laws, ordinances and orders for town
22 government to be enforced." [Amesbury Home Rule Charter (AHRC),
23 section 2-2] which is subject to AHRC 1-4. How can he (or she),
24 when, neither he nor his subordinates know what they really are or
25 say specifically. The lack of training and the reliance of
uninformed hearsay, it is apparent to this individual that neither,
the department head, the head librarian in 2005, and later the
sergeant, soon to be lieutenant, now police chief, did not know
what it was. And the mayor went on the word of his subordinates.
The sergeant, now police chief failed to advise the mayor that this

1 was not what is was, because did not know and executed the order.
2 Instead, they do what they want, then they and farm it out to the
3 attorney. We are paying you, you handle it! A municipality can
4 also be held liable under 42 USC Section 1983 for injuries
5 resulting from a failure to train its employees properly. "A
6 municipality's failure train to train its employees in a relevant
7 respect evidences a deliberate indifference to the rights of its
8 inhabitants." [City of Canton v. Harris (S.Ct 1989)]

9 One of the many central issues in this case is the accountability of the
10 final policy maker. The Ninth Amendment of the United States Constitution
11 ratified by a sufficient number of states 12/15/1791 provides: "The
12 enumeration in the Constitution, of certain rights, shall not be construed to
13 deny or disparage others retained by the people." Justice Goldberg comments
14 that the liberties protected by the fourteen amendment are not limited to
15 those mentioned in the first eight amendments. [GRISWOLD ET AL. v.
16 CONNECTICUT - 381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510]. The
17 Massachusetts's Constitution of 1780 and the Declaration of Right's of the
18 Inhabitants, Article V, "states all power residing originally in the people,
19 and being derived from them, the several magistrates and officers of
20 government, vested with authority, whether legislative, executive or judicial
21 are their substitutes and agents, and are at all times accountable to them."
22 The Preamble to this same constitution states that the "body politic is
23 formed by a voluntary association of individuals - it is a social compact by
24 which the whole people people covenants with each citizen, and each citizen
25 with the whole people that all shall be govern governed by certain laws for
the common good." As I said the jury trial, it is the concept of "the good"
that underlies justice.

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

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

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

3 And given the Federalist 1788, numbers #69 & #73 and others, both written
4 by Hamilton, the subject of the propose executive " But that it would
5 be precisely the same with that of the governor of Massachusetts,
whose constitution, as to this article, seems to have been the
6 original from which the convention have copies; and #73, the
7 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.

8 So, Madison says in his proposition of constitutional amendments on June 8,
9 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
10 just importance of other rights retained by the people." Accountability,
Article V of the Declaration of Rights of Massachusetts Constitution is one
11 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
12 accountable for his actions. According to Pembaur v. Cincinnati (S.Ct
1986) to those establish official policy, specifically "officials
13 responsible for establishing final policy with respect to the
subject matter in question."

14 Municipal Liability

15 SUMMARY OF ARGUMENT:

16 One of the primary issue(s), among the many, is the failure of the
policy maker, the final authority, within the municipal
17 corporation, is an understanding of what constitutes sexual
harassment. This leads to the "no trespass letter," this failure
18 to understand the issue. The have no specific policy nor any real
understanding of the specifics of this issue or what actions make
19 it, what they alleged. No significant training exists. A reliance
on a general idea of what it was or is, make this oppression real
20 and dangerous to the body politic. Ultimately, it's where the buck
stops in this case, the final authority of the municipal
21 corporation.

22 Argument:

Standard of Review: De novo

23 Discussion of the Issues

24 The failure to train its employees is paramount issue as well and
combination with the employees not having a good handle on this
25 issue, the department supervisor as well and final policy maker and
admits that he aware in general. Monies appropriated for this type
of training was struck from the budget many years prior at least

1 five or ten years ago by the first mayor. For it is, I, that put
2 it there for fiscal year 1997 for that specific purpose, a sum of
3 10,000 thousand dollars. With the majority agreement of the
4 members of the board of selectmen and voted by the legislating
5 body, the appropriators, the town meeting of the municipal
6 corporation of Amesbury.

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

15 A municipality can also be held liable under 42 USC Section 1983
16 for injuries resulting from a failure to train its employees
17 properly. "A municipality's failure train to train its employees in
18 a relevant respect evidences a deliberate indifference to the
19 rights of its inhabitants." [City of Canton v. Harris (S.Ct 1989)]

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

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

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

37 The mayor has final authority he was not sure what it was, and
38 neither were his supervisor subordinates nor his employees. The
39 injury here is being wrongly accused by those who thought they knew
40 what it was, that is, what constitutes sexual harassment, but
41 really did not know what constitutes the act or an act of sexual
42 harassment.

CONCLUSION

1 The relief sought by the Plaintiff-Appellant, JAMES N. THIVIERGE,
2 for the United States Appellant Court to immediately restore my
3 natural access to all public facilities and functions that he has
4 been accustom to and happy with throughout his adult life till this
5 change occurred, in and around, the early part of the two thousands
6 nearly six years ago; and that the Plaintiff-Appellant seeks
7 damages for he has lost his house and incurred considerable debt
8 and inconvenience during the course of these proceedings in
9 addition loss of reputation due to the many misinterpretations that
10 can be held due either the lack of knowledge of the proceedings
11 and the malice of libel and the slanders that emanate from letters,
12 his Civil Rights violated under the 1964 Civil Rights Act, the 1965
13 Voting Rights Act. I have done no wrong, and broken no law, but be
14 an interested citizen running for public office, one of the highest
15 forms of free speech and speaking knowledgeable with considerable
16 background and experience at public comment on issues that I am
17 familiar from first hand experience with the public interests and
18 the best intentions, as a former public official in the town, and a
19 state official in my day time work life in Boston plus specific
20 graduate education in field to reference in those comments. I
21 believe I have been wrongfully accused and kept out of the public
22 facilities and functions of the community.

23 THE PLAINTIFF-APPELLANT, JAMES N. THIVIERGE, IS FALSELY AND MALICIOUSLY
24 WRONGED BY THE TOWN OF AMESBURY AND THEIR AGENTS AND RESEPCTFULLY SEEKS
25 RELIEF AND REMEDY BY THE WISDOM OF THE UNITED STATES APPELATTE COURT FOR THE
FIRST DISTRICT. IN CONCLUSION, IN OTHER WORDS COMPLETE RESTORATION OF
ACCESS to all public facilities, LIKE IT NEVER HAPPENED WITH
DAMAGES FOR A WRONGFUL ACTION initiated over six years ago.

Certificate of Compliance with Rule 32(a)

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

1. this brief complies with the type-volume limitation of Fed R.
App. 32(a)(7)(B) because:

this brief contains (state the number of words), excluding the
parts of the brief exempted by Fed r. App. 32(a)(7)(B)(iii), or
this brief uses a monospaces typeface and contains (state the
number of lines) of text excluding the parts of brief exempted by
Fed R.. App P. 32(a)(7)(B)(iii).

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

1 This brief has been prepared in a proportionally spaces typeface
using (state name and version of the word processing program) in
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(state name and version of the word processing program) with
4 (11.5 state number of characters per inch and name of the type
style - courier).

page 2

5 A P P E A R A N C E S:

6 JAMES N. THIVIERGE, Appearing Pro Se.

7 KATHARINE I. DOYLE, ESQ., Kopelman and Paige, P.C.,
8 101 Arch Street, Boston, MA 02210, for the Defendants.

9
10 Q. Can I ask this question: Are you aware -- I mean, you're
11 in the public administration. This budget is 120 something
12 million. Are you aware that federal grants has to pass the
13 civil liberty and civil rights muster as part of the
14 authorization process in the Judiciary Committee? Are you
15 aware of that?

16 MS. DOYLE: Objection.

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

19 2-3-10

20 page 31 "authorization process" Addenda from the third day of the
21 trial

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

18 2-3-10 page 19 question on grants and technology

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Technology Act?

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

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

MS. DOYLE: Objection, your Honor.

THE COURT: Sustained.

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

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

MR. THIVIERGE: But it all revolves around the computer.

THE COURT: Well, ask about the computer.

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

MS. DOYLE: Objection.

THE COURT: I'll allow this.

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

2-3-2010 page 20 & 21 "the public record" and library technology
grant

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19 library grant from the -- from the -- applied from the Library
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THE COURT: -- they would have issued it anyway, and they say "yes," so I think they just misunderstood that. But I'm at least, unless someone asked me to, not inclined to send them back.

MR. THIVIERGE: Well, I disagree with the verdict, but --

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

THE COURT: Are the only computers that are accessible in the library itself?

THE WITNESS: I'm sorry?

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

THE WITNESS: Yes.

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THE CLERK: All rise for the jury.

(Jury excused.)

THE COURT: Thank you. So this case is now resolved. The only question that has been unclear from the beginning, and now we've got some clarity on it, is about the library. So I think you need to tell the library that the no-trespass order is no longer in effect.

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

MS. DOYLE: Thank you, your Honor.

MR. THIVIERGE: Thank you, your Honor.

THE CLERK: Court is in recess.

(Adjourned, 4:03 p.m.)

day 4 2-4-2010 Honorable Judge Saris ruling

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JAMES N. TRIVIERGE,)	
)	
Plaintiff)	
)	
-VS-)	CA No. 08-10123-UES
)	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

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WITNESS DIRECT CROSS REDIRECT RECROSS

Thatcher W. Kezer, III 50

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THATCHER W. KEZER, III

having been first duly sworn, was examined and testified as follows:

9

THE CLERK: Would you please state your name and it for the record.

11

THE WITNESS: Sure. My name is Thatcher W. Kezer, III. T-h-a-t-c-h-e-r, last name K-e-z-e-r.

13

DIRECT EXAMINATION BY MR. THIVIERGE:

14

Q. Good morning, Mayor Kezer.

15

A. Good morning.

day One 2-1-2010 page 50

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

2 13 A. I'm not sure what the legal definition is, but based on
3
4 14 the reports that I were getting, it was fitting the general --
5 15 my general understanding of sexual harassment.

6
7 16 MR. THIVIERGE: Thank you very much. I have no
8 17 further questions, but I, you know, would like the chance to --

9
10 day one 2-1-2010 page 60 question "constitutes sexual harassment"

11 Thivierge V. Amesbury Jury Trial Day Two pages 63& 64
12 Kezer comments and introduction of the "annual reports"

13 MR. THIVIERGE: Well, the thing is, I did. You know,
14 3 he doesn't know anything about the particulars of what
15 4 constitutes sexual harassment, so that in itself is --

16 5 THE COURT: Excuse me, please don't argue. What's the
17 6 next question for him?

18 7 MR. THIVIERGE: Okay, all right.

19 8 Q. Televised meetings, are you aware of the cable contract?

20 9 MS. DOYLE: Objection.

21 10 THE COURT: Sustained.

22 11 MR. THIVIERGE: The cable contract is under his
23 12 jurisdiction.

24 13 THE COURT: Excuse me, excuse me. You know what we'll
25 14 do, we're going to at this point take our morning recess,
and

we'll talk about this at this point.

16 THE CLERK: All rise for the jury.

17 (Jury excused.)

18 THE COURT: So what is it you want to explain while
19 the jury is not here because this seems irrelevant?

20 MR. THIVIERGE: No. I want to refer to the annual
21 report --

22 THE COURT: Why? 23 MR. THIVIERGE: -- of the city.

24 THE COURT: Why? 25 MR. THIVIERGE: Why?

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THE CLERK: All rise for the jury.

(Jury excused.)

THE COURT: Thank you. So this case is now resolved. The only question that has been unclear from the beginning, and now we've got some clarity on it, is about the library. So I think you need to tell the library that the no-trespass order is no longer in effect.

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

MS. DOYLE: Thank you, your Honor.

MR. THIVIERGE: Thank you, your Honor.

THE CLERK: Court is in recess.

(Adjourned, 4:03 p.m.)

2-4-2010 page 128 Sidebar conference relative to the "inconsistent verdict."

SIDE-BAR CONFERENCE:

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

(End of side-bar conference.)

12.24.07

01 0020
2473C

106 Friend Street, Amesbury, Massachusetts 01913

James N. Thivierge v. Town of Amesbury Mayor Kezer, Assessor. Office
Tax Clerk, Sub. Tax Agent J. Lebrun

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

DEC 26 2007

Your Honor

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

TRIVE COPY INTEREST
[Signature]
DEPUTY ASST. CLERK

*James N. Thivierge
106 Friend Street
Amesbury, MA 01913
12-19-07*



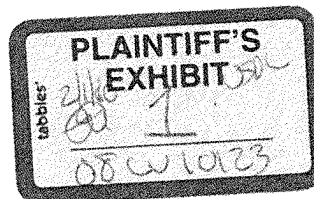
Amesbury

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 Trespass 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
- OFFICERS - WRIGHT
- CHATIGNY

9/17/2007

Mayor Kezer:

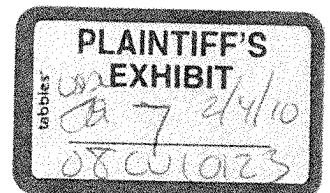
On the accompanying letter from Sgt. Gagnon, I, being the subject, categorically reject all claims and allegations made by it and consider it an insult to have received this letter from him Friday afternoon September 14. So in order to protect my character and reputation from further assault by this 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 action of the statute. Given the timing of the letter, I consider this action the lowest political and indicative of why and what I am running against unless rectified immediately.

To act on the documents under the charter given the subject matter of this election, the order of the municipal 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 expiated 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



12.24.07
106 Fremont Street
Orem, UT 84057

(B)

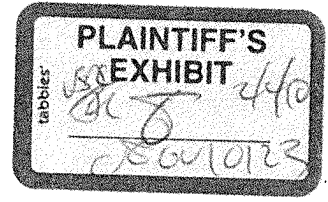
the other party;
Mayor of Provo, UT

I regret your
mischaracterization and
of date you from further
lethal writing plus the
statements that can emanate
from them injury reputation
character.

I request immediate
retraction and I plan to seek
other action from the citizens
available to members of the body
public; the purpose of agreement
to you are aware.

A very concerned citizen

James Farner
Resident



(A BAD HAND writing Day)
Done only December 24, 2007
Not mailed to file to court - bad

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.

(FINAL)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES THIVIERGE,
Plaintiff,

v.

TOWN OF AMESBURY,
Defendant.

CIVIL ACTION NO. 08-10123-PBS

(91)

Calo
Amesbury
Plaintiff
Defendant
Consent
State Court
Legal Council
Amesbury
1st
Amesbury

VERDICT FORM

[Answer Q.1 - Q.2]

The Town

Q.1. Did plaintiff prove that the Town violated his First Amendment rights when it issued the no trespass order barring him from the library?

_____ Yes _____ No

Q.2. Did the plaintiff prove that the Town violated his First Amendment rights when it restricted his right to enter Town Hall and other Town facilities?

_____ Yes _____ No

Q.3. If you find that plaintiff's First Amendment rights were a substantial motivating factor in causing the "No Trespass" order restricting plaintiff's access to town facilities in Q.2, did the Town prove that it would have issued the order regardless due to misconduct on plaintiff's part?

_____ Yes _____ No

No Trespass
Order
Amesbury
Plaintiff
Defendant

Amesbury
Plaintiff
Defendant
1st
Amesbury

Amesbury
Plaintiff
Defendant
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Amesbury

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Amesbury

The Commonwealth of Massachusetts

PRESIDENTIAL PRIMARY

DEMOCRATIC

OFFICIAL

SPECIMEN

BALLOT

Penalty for forgery, falsification, alteration, mutilation, or destruction of a ballot or specimen ballot is not exceeding One Hundred Dollars.

SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS

AMESBURY 292/292

Tuesday, March 2, 2004

To vote for a candidate, fill in the oval to the right of the candidate's name. To vote for a person not on the ballot, write that person's name and residence in the blank space provided and fill in the oval.

PRESIDENTIAL PREFERENCE

To express your preference for the person to be nominated as Democratic candidate for President, you may do one of the following:

- Vote for one candidate on this page or
Write in another name and fill in the oval to the right.
Caution: Do not vote for "No Preference" and write-in.

- RICHARD BERNARDT
JOSEPH LIEBERMAN
WESLEY K. CLARK
HOWARD DEAN
CAROL MOSELEY BRAUN
JOHN EDWARDS
DENNIS J. KUCINICH
JOHN F. KERRY
LYNDON H. LAROUCHE, JR.
AL SHARPTON
NO PREFERENCE

DO NOT VOTE IN THIS SPACE. USE BLANK LINE BELOW FOR WRITE-IN.

STATE COMMITTEE MAN

Vote for ONE MAN
JAMES J. FIORENTINI
DO NOT VOTE IN THIS SPACE. USE BLANK LINE BELOW FOR WRITE-IN.

STATE COMMITTEE WOMAN

Vote for ONE WOMAN
LOUISE C. BEVILACQUA
DO NOT VOTE IN THIS SPACE. USE BLANK LINE BELOW FOR WRITE-IN.

TOWN COMMITTEE

Vote for not more than thirty-five
names for individual candidates or
for one name for each group or
for one name for each group. Do not vote for more than thirty-five
names for each group.

GROUP

Write in one name only in the blank space.

- JANE B. SIEBECKER
ROGER S. BENSON
MARGARET S. COSTELLO
GERARD E. NOLAN
THEODORE W. VAN NAHL
BENJAMIN C. SIEBECKER
THATCHER W. KEZER
ANN CASEY LANGLOIS
MARIE B. MESSNER
JAMES H. THIVERGE
SHEILA C. CASEY
JOANNA HAMMOND
BERNADETTE S. LUCAS
DAVID T. HILDT
HENRY E. FOURNIER
J LORI EDWARDS
THOMAS J. EDWARDS
BARBARA A. HILDT
JOHN V. EMERSON
CYNTHIA C. COSTELLO
NICHOLAS J. COSTELLO
ROBERT E. GAUDET
JOSEPH S. COSTELLO
TIA E. COSTELLO
USE BLANK LINE BELOW FOR WRITE-IN.

08-10123- P135 005a

The Commonwealth of Massachusetts
PRESIDENTIAL PRIMARY

DEMOCRATIC
 OFFICIAL
 SPECIMEN
 BALLOT

Ready for use, this ballot contains blank space to vote for any candidate for President, including those who are not on the ballot.

AMESBURY
 292/292

SECRETARY OF THE
 COMMONWEALTH OF MASSACHUSETTS

Tuesday, February 5, 2008

To vote for a candidate, fill in the oval to the right of the candidate's name. To vote for a person not on the ballot, write that person's name and residence in the blank space provided and fill in the oval.

PRESIDENTIAL PREFERENCE

To express your preference for the person to be nominated as Democratic candidate for President, you may do one of the following:

- Vote for one candidate on this page or
- Vote for "No Preference." If you do not wish to vote for a candidate or
- Write in another name and fill in the oval to the right.

Caution: Do not vote for "No Preference" and write-in.

JOHN R. EDWARDS

HILLARY CLINTON

JOSEPH R. BIDEN, JR.

CHRISTOPHER J. DODD

MIKE GRAVEL

BARACK OBAMA

DENNIS J. KUCINICH

BILL RICHARDSON

NO PREFERENCE

DO NOT VOTE IN THIS SPACE

USE BLANK LINE BELOW FOR WRITE-IN

WRITE IN SPACE ONLY

STATE COMMITTEE MAN

VOTE FOR ONE MAN

JAMES J. FLORENTINI

DO NOT VOTE IN THIS SPACE

USE BLANK LINE BELOW FOR WRITE-IN

WRITE IN SPACE ONLY

STATE COMMITTEE WOMAN

VOTE FOR ONE WOMAN

LOUISE C. BEVLACQUIA

DO NOT VOTE IN THIS SPACE

USE BLANK LINE BELOW FOR WRITE-IN

WRITE IN SPACE ONLY

TOWN COMMITTEE

To vote for individual candidates fill in the oval to the right of the candidate's name or

- To vote for a write-in candidate fill in the oval after the word "GROUP" and write for more than three family members.

GROUP

HATCHER W. KEZER

ROGER S. BENSON

KATE BROUGHTON

DO NOT VOTE IN THIS SPACE

USE BLANK LINE BELOW FOR WRITE-IN

WRITE IN SPACE ONLY

WRITE IN SPACE ONLY

WRITE IN SPACE ONLY

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Contains
Title vi 1964
Civil Rights Act

Certification HOPWA
Section 3
Housing & Urban
Development Act - 7
1968 - 12 USC 1701u
24 CFR part 135
CDBG
City Parkston
§ 91.115

§ 91.325

24 CFR Subtitle A (4-1-05 Edition)

(4) HOPWA. The State shall state the method of selecting project sponsors.

Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(Approved by the Office of Management and Budget under control number 2506-0117)

160 FR 1896, Jan. 5, 1995; 60 FR 4861, Jan. 25, 1995, as amended at 60 FR 16379, Mar. 30, 1995; 61 FR 48750, Sept. 16, 1996; 61 FR 54920, Oct. 22, 1996; 69 FR 16765, Mar. 30, 2004]

(8) Section 3. The State must submit a certification that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

§ 91.325 Certifications.

(a) General--(1) Affirmatively furthering fair housing. Each State is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the State, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See § 570.487(b)(2)(ii) of this title.)

(b) Community Development Block Grant program. For States that seek funding under CDBG, the following certifications are required:

(1) Citizen participation. A certification that the State is following a detailed citizen participation plan that satisfies the requirements of § 91.115, and that each unit of general local government that is receiving assistance from the State is following a detailed citizen participation plan that satisfies the requirements of § 570.486 of this title.

(2) Anti-displacement and relocation plan. The State is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(2) Consultation with local governments. A certification that:

(i) It has consulted with affected units of local government in the non-entitlement area of the State in determining the method of distribution of funding;

(3) Drug-free workplace. The State must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(ii) It engages or will engage in planning for community development activities;

(4) Anti-lobbying. The State must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(iii) It provides or will provide technical assistance to units of general local government in connection with community development programs;

(5) Authority of State. The State must submit a certification that the consolidated plan is authorized under State law and that the State possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(iv) It will not refuse to distribute funds to any unit of general local government on the basis of the particular eligible activity selected by the unit of general local government to meet its community development needs, except that a State is not prevented from establishing priorities in distributing funding on the basis of the activities selected; and

(6) Consistency with plan. The State must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESC, and HOPWA funds are consistent with the strategic plan.

(v) Each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of the low-income and moderate-income families, and the activities to be undertaken to meet these needs.

(7) Acquisition and relocation. The State must submit a certification that it will comply with the acquisition and relocation requirements of the Uniform

(3) Community development plan. A certification that this consolidated

570.487

local government

plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in 24 CFR 570.2, and requirements of this part and 24 CFR part 570.

24 CFR 570.2
570.

(4) *Use of funds.* A certification that the State has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the State, consisting of one, two, or three specific consecutive program years, shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.481 for definition of "CDBG funds"); and

24 CFR 570.48

(iii) The State will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements fi-

nanced by a source other than with CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the State certifies that it lacks CDBG funds to cover the assessment.

(5) *Compliance with anti-discrimination laws.* A certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations.

Compliance with anti-discrimination laws
1964 Civil Rights Act

(6) *Excessive force.* A certification that the State will require units of general local government that receive CDBG funds to certify that they have adopted and are enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(7) *Compliance with laws.* A certification that the State will comply with applicable laws.

(c) *Emergency Shelter Grant program.* For States that seek funding under the Emergency Shelter Grant program, a certification is required by the State that it will ensure that its State recipients comply with the following criteria:

(1) In the case of assistance involving major rehabilitation or conversion, it will maintain any building for which assistance is used under the ESC program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, it will maintain any building for which assistance is used under the ESC program as a shelter for homeless individuals and families for not less than a three-year period;

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
TAX RATE RECAPITULATION

FISCAL 2010

OF
AMESBURY
City / Town / District

I. TAX RATE SUMMARY

- Ia. Total amount to be raised (from IIe)
- Ib. Total estimated receipts and other revenue sources (from IIIe)
- Ic. Tax levy (Ia minus Ib)
- Id. Distribution of Tax Rates and levies

Handwritten notes:
 2010
 160,518
 2011
 20,900
 11,455
 2010
 55,951,772.67
 22,053,854.91
 33,897,917.76

CLASS	(b) Levy percentage (from LA - 5)	(c) IC above times each percent in col (b)	(d) Valuation by class (from LA - 5)	(e) Tax Rates (c) / (d) x 1000	(f) Levy by class (d) x (e) / 1000
Residential	85.5733%	29,007,566.86	1,832,389,706	17.77	29,007,566.08
Net of Exempt					0.00
Open Space	0.0000%	0.00	0		0.00
Commercial	7.5437%	2,557,157.22	143,902,844	17.77	2,557,153.54
Net of Exempt					0.00
Industrial	4.9884%	1,690,963.73	95,158,230	17.77	1,690,961.75
SUBTOTAL	98.1054%		1,871,450,780		33,255,680.37
Personal	1.8946%	642,229.95	36,141,665	17.77	642,237.39
TOTAL	100.0000%		1,907,592,445		33,897,917.76

Board of Assessors of **AMESBURY**
City / Town / District

MUST EQUAL IC

NOTE : The information was Approved on 12/08/2009.

Mary L. Moran, Chief Assessor, Amesbury, 876-386-8100
ASS090901

12/07/2009 9:02 AM
Date (Comments) ASSESSORS APPROVES on file Dec. 7, 2009

Handwritten notes:
 1/2/10
 1/2/10
 1/2/10
 1/2/10
 1/2/10

Do Not Write Below This Line --- For Department of Revenue Use Only

Reviewed By **Everett Griffiths**
 Date : **08-DEC-09**
 Approved : **Gerard Perry**
 Director of Accounts

Signature of Gerard D. Perry
(Gerard D. Perry)

PLAINTIFF'S EXHIBIT
 2010
 08/08/2009



STATE LEGAL OFFICER'S CERTIFICATION

of

AUTHORIZED CERTIFYING OFFICIAL

I hereby certify that in Massachusetts (Name of State),

the Massachusetts Board of Library Commissioners (Name of State Agency)

is the official State Agency with authority under State law to develop, submit, and administer or supervise the administration of the State Plan under the Library Services

and Technology Act; that Robert C. Maier (Name of

Authorized Certifying Official) is the officer authorized to submit the State Plan, sign

all assurances, certifications, and reports and to whom the grant award is made for the

named State Agency; that the State Treasurer or N/A

(**Title of Officer other than State Treasurer**) has authority under State law to receive,

hold, and disburse Federal funds under the State Plan; and that all provisions contained in

the Plan are consistent with State law.

Martha Coakley
(Signature of Attorney General or Other State Legal Officer)

MARTHA COAKLEY, ATTORNEY GENERAL
Print Name and Title

6/28/07
Date

State: Massachusetts



**Program Assurances
for
2008 Grant Award**

All State Library Administrative Agencies receiving assistance under the Library Services and Technology Act, 20 U.S.C. Section 9121 et seq., as amended, must comply with the statutes and regulations cited below. To receive federal assistance, all applicants must provide this signed Statement of Program Assurances.

The undersigned, on behalf of the State Library Administrative Agency (SLAA), agrees that the SLAA will comply with Subtitle B of the Museum and Library Services Act of 1996 -- the Library Services and Technology Act ("LSTA" or this "Act"), P.L. 104-208, as amended, and all of its provisions, including those set forth below.

- (a) Pursuant to 20 U.S.C. Section 9122(5), the SLAA provides assurance that it has the fiscal and legal authority and capability to administer all aspects of the LSTA, that it will establish the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under this Act (including the development of a State Plan), and that it will submit copies of these materials for approval as required by regulations promulgated by the Director of the Institute of Museum and Library Services (IMLS). CFR
- (b) Pursuant to 20 U.S.C. Section 9134(b)(6), the State Library Administrative Agency provides assurance that it will comply with 20 U.S.C. Section 9134(f), which sets out standards relating to Internet Safety for public libraries and public elementary school and secondary school libraries that do not receive services at discount rates under section 254(h)(6) of the Communications Act of 1934, and for which IMLS State Program funds are used to purchase computers used to access the Internet or to pay for direct costs associated with accessing the Internet.
- (c) Pursuant to 20 U.S.C. Section 9134(b)(7), the SLAA provides assurance that it shall make reports, in such form and containing such information, as the Director may require reasonably to carry out the State Plan and to determine the extent to which funds provided under this Act have been effective in carrying out the purposes of this Act. Regulations
- (d) The SLAA agrees that it will comply with all applicable IMLS regulations, including 45 C.F.R. Part 1183 -- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government; 45 C.F.R. Part 1180.44 -- Federal Statutes and Regulations on Nondiscrimination; 45 C.F.R. Part 1110 -- Nondiscrimination in Federally Assisted Programs; 45 C.F.R. Part 1185 -- Government-wide Debarment and Suspension; and 45 C.F.R. Part 1186-- Government-wide Requirements for Drug-Free Workplace.

The SLAA further provides assurance that it will comply with all other applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding.

These assurances are provided in connection with any and all financial assistance from the Institute of Museum and Library Services after the date this form is signed. This includes payments after such date for financial assistance approved before such date. The SLAA recognizes and agrees that any such assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this Statement of Program Assurances. These assurances are binding on the SLAA, its successors, transferees, and assignees, and on the Authorized Certifying Official whose signature appears below.

For additional information on this Statement of Program Assurances, contact the IMLS State Programs Office, at 1800 M Street, NW, 9th Floor, NW, Washington, DC 20036-5802.

Robert C. Maier
Signature of Authorized Certifying Official

Robert C. Maier, Director
Print Name and Title of Authorized Certifying Official

6/19/07
Date

COMMONWEALTH OF MASSACHUSETTS - STANDARD CONTRACT FORM



This form, to be used for New Contracts and Contract Amendments/Renewals, is jointly issued and published by the Executive Office for Administration and Finance (EAF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors should only complete sections marked with a "→". For instructions and hyperlinks (italics), please view this form at: www.mass.gov/proc under Guidance For Vendors - Forms or at www.mass.gov/osd under OSD Forms.

→ <u>Contractor Legal Name</u> (and d/b/a): TOWN OF AMESBURY		<u>Department MMARS Alpha Code and Name</u> : Massachusetts Board of Library Commissioners	
→ <u>Legal Address</u> (from W-9): 62 FRIEND STREET, Amesbury, MA 01913-2899		<u>Business Mailing Address</u> : 88 North Washington Street, Suite 401, Boston, MA 02114	
→ <u>Payment Remittance Address</u> (from W-9)		<u>Billing Address</u> (if different)	
→ <u>Contract Manager</u> : Patricia D'Amico, Amesbury Public Library		<u>Contract Manager</u> : Beth Wade	
→ <u>E-Mail Address</u> : mam@mailserv.mvle.town.ma.us	→ <u>Phone</u> : (978)388-6149	<u>E-Mail Address</u> : Beth.Wade@state.ma.us	<u>Phone</u> : (617) 725-1850 ext. 232
→ <u>Fax</u> : (978)388-2662	→ <u>TTY</u> :	<u>Fax</u> : (617) 725-0140	<u>TTY</u> :
→ <u>State of Incorporation</u> (if a corporation) or "N/A": N/A		<u>MMARS Doc ID(s)</u> : 11111111111111111111111111111111	
→ <u>Vendor Code</u> : VC6000191693		<u>RFR/Procurement or Other ID Number</u> (if applicable)	
<u>MMARS Object Code</u>		<u>Account(s) Funding Contract</u> : 7000-9702	

<p align="center">X NEW CONTRACT</p> <p><u>COMPENSATION</u> (Check only one): <input checked="" type="checkbox"/> <u>Total Maximum Obligation</u> of this Contract: \$5,000.00 <input type="checkbox"/> <u>Rate Contract</u> (Attach details of rate(s) units and any calculations).</p> <p>The following <u>COMMONWEALTH TERMS AND CONDITIONS</u> for this Contract has been executed and filed with CTR (Check only one): <input checked="" type="checkbox"/> <u>Commonwealth Terms And Conditions</u> <input type="checkbox"/> <u>Commonwealth Terms And Conditions For Human And Social Services</u></p> <p><u>PROCUREMENT OR EXCEPTION TYPE</u> (Check one option only): <input type="checkbox"/> <u>Single Department Procurement/Single Department User Contract</u> <input type="checkbox"/> <u>Single Department Procurement/Multiple Department User Contract</u> <input type="checkbox"/> <u>Multiple Department Procurement/Limited Department User Contract</u> <input type="checkbox"/> <u>Statewide Contract (OSD or an OSD-designated Department)</u> <input checked="" type="checkbox"/> <u>Grant (as defined by 815 CMR 2.00)</u> <input type="checkbox"/> <u>Emergency Contract (attach justification)</u> <input type="checkbox"/> <u>Contract Employee (Complete Employment Status Form)</u> <input type="checkbox"/> <u>Collective Purchase (attach OSD approval)</u> <input type="checkbox"/> <u>Legislative/Legal Exemption (attach authorizing language)</u> <input type="checkbox"/> <u>Other (Specify and attach documentation)</u></p> <p><u>ANTICIPATED START DATE</u>: 10/1/2008 (Enter the Date Contract Obligations may begin - Review Certification for Effective Date Below prior to entry) <u>CONTRACT END DATE</u>: 9/30/09</p>	<p align="center">CONTRACT AMENDMENT/RENEWAL</p> <p>ENTER <u>CURRENT CONTRACT START and END DATES</u> (prior to amendment) Current Start Date: _____ Current End Date: _____</p> <p><u>COMPENSATION</u>: (Check Either, "No Compensation Change", "Maximum Obligation" or "Rate change". ATTACH Amended Scope and Budget to support Amendment.) <input type="checkbox"/> <u>No Compensation Change (Skip to "OTHER" section below and select change)</u> <input type="checkbox"/> <u>Redistribute Budget Line Items (No Maximum Obligation Change)</u> <input type="checkbox"/> <u>Maximum Obligation Change</u> a) <u>Current Total Contract Maximum Obligation</u>: \$ _____ (Total Contract Maximum Obligation, including all prior amendments) b) <u>Amendment Amount ("+" or "-")</u>: \$ _____ c) NEW TOTAL CONTRACT MAXIMUM OBLIGATION: \$ _____ <input type="checkbox"/> <u>Rate Changes to Rate Contract</u></p> <p><u>OTHER</u>: (Check option, explain under "Brief Description" below, and attach documentation.) <input type="checkbox"/> <u>Amend Duration Only (No Compensation or Performance Change)</u> <input type="checkbox"/> <u>Amend Scope of Services/Performance Only (no budget impact)</u> <input type="checkbox"/> <u>Interim Contract (Temporary Extension to complete new Procurement)</u> <input type="checkbox"/> <u>Other</u>: (Describe Details and Attach documentation)</p> <p><u>ANTICIPATED START DATE</u>: _____ (Enter the Date Amendment Obligations may begin - Review Certification for Effective Date Below prior to entry) <u>NEW CONTRACT END DATE</u>: _____</p>
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→ PROMPT PAYMENT DISCOUNTS: Contractor has agreed to the following Prompt Pay Discounts for the listed Payment Issue Dates. See Prompt Payment Discount Policy.
 % Within 10 Days % Within 15 Days % Within 20 Days % Within 30 Days OR, Check off the following if:
 Contractor either claims hardship, or chooses not to provide PPD, or compensation is not subject to prompt pay discounts (grants, non-commodity or non-service compensation)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT (Reference to attachments is insufficient!) In partnership with Libraries for the Future (LFF), the library received four days of training in programming for Lifelong Access, a model for community-library collaboration, which provides services, information and programs in support of productive aging and civic engagement.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, or an earlier Start date listed above, the "Effective Date" of this Contract or Amendment shall be the latest date this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, a later Contract or Amendment Start Date specified above, or the date of any required approvals. By executing this Contract/Amendment, the Contractor makes, under the pains and penalties of perjury, all certifications required under the attached Contractor Certifications, and has provided all required documentation noted with a "→", or shall provide any required documentation upon request, and the Contractor agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein, including the terms of the applicable Commonwealth Terms and Conditions available at www.mass.gov/proc under Guidance For Vendors - Forms or at www.mass.gov/osd under OSD Forms, the terms of the attached Instructions, the Request for Response (RFR) solicitation (if applicable) or other authorization, the Contractor's response to the RFR or solicitation (if applicable), and any additional negotiated performance or budget provisions. The terms of this Contract shall survive its termination for the purpose of resolving any claim, dispute or other Contract action or for effectuating any negotiated representations and warranties. **THE PARTIES HEREBY ALSO CERTIFY THAT (Check one option only):**

- the Contractor has NOT incurred any obligations triggering a payment obligation for dates prior to the Effective Date of this Contract or Amendment, OR
- any obligations incurred by the Contractor prior to the Effective Date of this Contract or Amendment (for which a payment obligation has been triggered) are intended to be part of this Contract/Amendment and shall be considered a final Settlement and Release of these obligations which are incorporated herein, and upon payment of these obligations, the Contractor forever releases the Commonwealth from any further claims related to these obligations.

<p>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</p> <p>→ X: <u>[Signature]</u> Date: <u>10/1/08</u> (Signature and Date Must Be Handwritten At Time of Signature)</p> <p>→ <u>Print Name</u>: <u>Kathleen M. [Name]</u></p> <p>→ <u>Print Title</u>: <u>Library Director</u></p>	<p>AUTHORIZING SIGNATURE FOR THE DEPARTMENT:</p> <p>X: <u>[Signature]</u> Date: <u>10/1/08</u> (Signature and Date Must Be Handwritten At Time of Signature)</p> <p><u>Print Name</u>: <u>Robert C. Meier</u></p> <p><u>Print Title</u>: <u>Director</u></p>
---	--

MASSACHUSETTS BOARD OF LIBRARY COMMISSIONERS
98 NORTH WASHINGTON STREET, SUITE 401
BOSTON, MASSACHUSETTS 02114

AGREEMENT

The Amesbury Public Library agrees to accept the allocation of \$5000 in Federal funds under the State Plan for the Library Services and Technology Act (LSTA) Special Mini-Grant Program entitled "EqualAccess" for the fiscal year 2009. Such sum shall be disbursed within the period October 1, 2008 to September 30, 2009.

FY 2010

IT IS UNDERSTOOD THAT PARTICIPATION IN THIS PROGRAM INVOLVES AN AGREEMENT TO ACCEPT AND ADHERE TO THE FOLLOWING REGULATIONS AND CONDITIONS:

1. The Amesbury Public Library will fulfill the program described in the application, which was approved by the recipient's governing body and by the Board of Library Commissioners. In fulfilling this program the library shall follow all state and local laws, rules, regulations, standards, and procedures required by the Board of Library Commissioners, subject to Federal statutes, and regulations including, but not limited to, those enumerated in this agreement.
2. Prior written approvals from the EqualAccess State Manager are required:
 - a. for programmatic changes
 - b. for budget revisions involving, but not limited to, transfers of funding amounts between categories and changes in indirect and direct costs
 - c. for changes in project scope, objectives or key personnel
 - d. to continue the project for a continuous period of more than three months without a Project Director. When a new Project Director is appointed, the EqualAccess State Manager must be notified in writing.
 - e. to transfer to a third party, by contracting or other means, the actual performance of the substantive programmatic work.

Decisions are rendered within thirty days.

3. The library ensures equal employment, equal opportunities, and affirmative action, regardless of race, color, creed, national origin, sex, or handicap, in compliance with the Education Amendments of 1972, 1974, and 1976, Title IX; Title VI of the Civil Rights Act of 1964; the Equal Pay Act; U.S. Executive Order 11246; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1973 as amended; and Massachusetts Executive Orders 227 and 130.
4. The library will comply with the provisions of the Hatch Act (5 U.S.C. sec. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
5. Federal funds for the purchase of materials as part of a Special Project Grant are to be used specifically for instituting new services or to supplement present services as required by the project. Such funds are not to be used as a substitute for local funding.