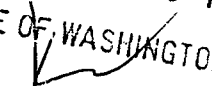


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COURT OF APPEALS
DIVISION II
2015 FEB 17 AM 9:19
STATE OF WASHINGTON
BY 
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46400-4-II

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

**ARTHUR WEST,
appellant,**

Vs.

**TESC, STATE OF WASHINGTON,
respondents**

APPELLANT'S OPENING BRIEF

**Arthur West
120 State Ave N.E. #1497
Olympia, Washington, 98501**

Table of Contents.....1

Table of Authorities.....2

Summary of Argument.....3

Assignments of Error.....6

Statement of the case.....7

Argument.....10

I The Court erred in failing to find a violation of the PRA when TESC failed to produce its Criminal Trespass List in an apparent attempt to obscure the continuing arbitrary and unconstitutional exclusion of members of the public from State land.....10

II The Court erred in dismissing appellant's claims including those related to the threats, arrest, and false imprisonment by TESC under color of its criminal trespass policy taken to chill the exercise of West's constitutional rights.....16

III The Court erred in failing to grant a continuance, suppressing relevant evidence, allowing the submission of inconsistent and/or perjured testimony, and in granting summary judgment when factual issues were disputed.....18

IV The Court erred in abusing its discretion to attempt to evade an appeal by not entering a final Order subject to Appeal.....20

Conclusion.....21

TABLE OF AUTHORITIES

Bishop v. Miche, 137 Wn.2d 518, 523, 973 P.2d 465 (1999).....19

Bouie v. City of Columbia, South Carolina, 378 U.S. 347 (1964).....17

Buckner, Inc. v. Berkey Irrigation Supply,
89 Wn. App. 906, 916, 951 P.2d 338 (1998).....20

Hartley v. State, 103 Wn.2d 768, 775, 698 P.2d 77 (1985).....20

Hearst Corp. v. Hoppe, 90 Wn.2d 123, 580 P.2d 246 (1978).....11

In re Detention of Turay, 139 Wn.2d 379,
391, 986 P.2d 790 (1999).....20

Jones v. State, 170 Wn.2d 338, (2010).....20

Oglesby v. U.S. Dep’t of Army,
287 U.S. App. D.C. 126, 920 F.2d 57, 68 (1990)..... 13

PAWS v. University of Wushington,
125 Wn.2d 243, 251, 884 P.2d 592 (1994)..... 15

Valencia-Lucena v. U.S. Coast Guard,
336 U.S. App. D.C. 386, 180 F.3d 321, 326 (1999).....13

CONSTITUTIONAL PROVISIONS

The 14th Amendment..... 17

The 4th Amendment..... 16

LAWS

RCW 42.56.030.....22
CR 56.....17

SUMMARY OF ARGUMENT

This case underscores why the paramount right to be informed of the operation of government is a necessary precondition to the sound governance of a free society.

For the laws of the State of Washington to actually be enforced as they are written on the campus of TESC, it is imperative that the records concerning the enforcement of the TESC Trespass policy be disclosed, and that our courts operate fairly and as required by the constitution and laws.

This appeal concerns a manifestly illegal policy that the TESC administration employs to arbitrarily exclude the public from State lands under false color of the criminal trespass law.

Despite representing to the Superior Court that the practice

had been discontinued and obtaining a dismissal in Cause No 89-2-00696-8 under that representation, (See CP 83-89) the institution quietly resumed the illegal policy, employing it to criminalize citizens access to State property held in trust for the people by the TESC Trustees.

When West requested records related to the trespass policy and the “TESC Trespass List” in 2012, the institution failed to produce the “TESC Trespass List” it maintained and which had been recently produced to another requester. Instead, the institution concealed the existence of the “TESC Trespass List” and produced, instead, a different document, a listing of trespass reports that postdated West's request.

In addition, the agency refused to make a reasonable search for or produce known responsive records such as police reports, or the correspondence and communications requested by West, stating that no other such records existed and he would have to file additional requests to obtain responsive police reports.

To add injury to insult, when West entered onto the campus to

inspect TESC records, he was threatened with the application of the TESC Trespass Policy and arrested, detained, falsely imprisoned for investigation of “Criminal Trespass” pursuant to policies usages and customs of the Evergreen State College. The first, unaltered declaration of John Hurley (CP 52, lines 4-5) attests to the Unlawful policy correctly.

The declaration of Officer Monohon also attests to an arrest and detention under color of the TESC Trespass Policy (CP 117) Yet despite clear contested facts concerning the unlawful seizure and detention of West under color of the TESC Trespass Policy, and inconsistent and contradictory testimony from the TESC witnesses, the court wrongfully granted summary judgment to TESC on all issues.

Under these circumstances the various actions of the Superior Court complained of herein regarding continuances, evidence¹, and evasion of entry of a final order are not merely abuses in and of themselves, but serve as obstacles to the correction of a more serious

¹ Including allowing the submission of altered and possibly perjured affidavits by TESC's John Hurley

abuse, the decades long history of arbitrary and illegal exclusion of the public from the TECS campus at the whim of the administrator at the desk, personified in the form of TESC's bellicose John Hurley.

ASSIGNMENTS OF ERROR

I The Court erred in failing to find a violation of the PRA when TESC failed to produce its Criminal Trespass List and other responsive records in an apparent attempt to obscure the continuing arbitrary and unconstitutional exclusion of members of the public from State land.....**10**

II The Court erred in dismissing appellant's claims including those related to the threats, arrest, and false imprisonment by TESC under color of its criminal trespass policy taken to chill the exercise of West's constitutional rights.....**16**

III The Court erred in failing to grant a continuance, suppressing relevant evidence, allowing the submission of inconsistent and/or perjured testimony, and in granting summary judgment when factual issues were disputed.....**18**

IV The Court erred in abusing its discretion to attempt to evade an appeal by not entering a final Order subject to Appeal.....**20**

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

I Did the Court err in failing to find a violation of the PRA when TESC failed to produce its Criminal Trespass List and other responsive records in an apparent attempt to obscure the continuing arbitrary and unconstitutional exclusion of members of the public from State land? Yes

II Did the Court erred in dismissing appellant's claims including those related to the threats, arrest, and false imprisonment by TESC under color of its criminal trespass policy taken to chill the exercise of West's constitutional rights? Yes

III Did the Court err in failing to grant a continuance, suppressing relevant evidence, allowing the submission of inconsistent and/or perjured testimony, and in granting summary judgment when factual issues were disputed? Yes

IV Did the Court err in abusing its discretion to attempt to evade an appeal by not entering a final Order subject to Appeal? Yes

STATEMENT OF THE CASE

This case involves the TESC Trespass Policy and a public records request filed by West for records related to the enforcement of the TESC Trespass Policy. (CP 4-8)

In May of 1989, following the filing of a motion for summary

judgment in West v. TESC, Thurston County Cause No. 89-2-00696-8, the College allegedly discontinued the illegal practice. (CP 82-89)

However, in 2014 we still see the institution maintaining a Trespass List and illegally excluding members of the public from peaceable and legal access to State land (CP at 20-34) it is no wonder they have a problem with full disclosure of the details of their enforcement of such a policy.

On 3-16-12 West requested...

1. The TESC trespass list and... a copy of any communications or final orders related to the TESC Criminal trespass list, 2008 to present.
2. Any records of prosecution or arrest of individuals for violation of the TESC Trespass policy
3. A current version of the TESC Trespass policy and any related WAC filing. (CP at 4-8)

West requested the TESC Trespass List in March of 2012 and the institution unreasonably delayed producing a response until after the filing of a complaint in the instant action. Even when the response was made the agency withheld known responsive records and produced a document created after the records request differing from the actual TESC Trespass List. (Transcript of August 3, 2012,

at page 8, line 23 – Page 9 line 19)

The TESC records officer in her response expressly denied that the college had any other responsive records, (CP at 17-18) **and stated that West would be required to file a further request to obtain the records he had requested in the March 16 request.** (CP at 18)

West was not provided with “The TESC trespass list and... a copy of any communications or final orders related to the TESC Criminal trespass list, 2008 to present.” (CP 17-18)

West was not provided with “Any records of prosecution or arrest of individuals for violation of the TESC Trespass policy.” (CP 17-18)

West was not provided with “A current version of the TESC Trespass policy and any related WAC filing.” (CP 17-18)

On May 8, 2015, plaintiff filed the instant action.(CP at 4-8)

On August 3, 2012, the Court heard argument and ruled on the preliminary issue of whether the agency's deliberate failure to produce the TESC Trespass list and other responsive records until

after a suit was filed Violated the PRA. (Transcript of August 3, 2012)

On November 15 2014 an Order was entered finding the agency had not violated the PRA, (CP at 46 and 48-50) despite clear evidence in the record that the agency had not provided responsive records. (CP at 17-18)

On December 20, 2013, the Court heard argument on a second Motion for Summary Judgment and a cross motion, and on January 3, 2014, entered a Final Order. (CP at 110-112)

On January 13, the plaintiff made a timely motion for reconsideration. (CP at 177-180)

On May 16, 2014, the Court abused its discretion by refusing to enter an order denying reconsideration.(CP at 189)

On June 16, 2014, a timely notice of appeal was filed. (CP at 190-199)

ORDERS ON APPEAL

Appellant seeks review of the Order of November 15, 2013 (CP 48-50) and the Order of January 3, 2014. (CP 110-112)

STANDARD OF REVIEW

De Novo

ARGUMENT

I The Court erred in failing to find a violation of the PRA when TESC failed to produce its Criminal Trespass List and other responsive records in an apparent attempt to obscure the continuing arbitrary and unconstitutional exclusion of members of the public from State land

This case underscores why the paramount right to be informed of the operation of government is a necessary precondition to the sound governance of a free society.

The PRA provides that... full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978) ("The Washington public disclosure act is a strongly-worded mandate for broad disclosure of public records."). Yet TESC in this case deliberately refused to comply with

this strongly worded mandate in an attempt to cover up the unlawful application of their Trespass Policy.

As Plaintiff's Motion for Summary Judgment, appearing in the record at CP 12-23 made clear, TESC failed to make a good faith search (See CP 13 at lines 4-6 and lines 15-17) for Trespass related records that it knew to be in existence from its own response to West and its response to earlier requests.

The TESC Trespass List (CP 27-34) was one known record, produced to a previous requester, Greg Hohnholtz just a few months prior to West's request. Yet its existence was denied and it was not produced to West.

The police reports were also known records that should have been provided without the requirement of an additional request. In addition, there are undoubtedly many Trespass related communications and records still being withheld to this very day. Yet, as West argued in his Motion for Summary Judgment, the agency refused to make a reasonable search for these records or produce them.

As the Supreme Court underscored in the Neighborhood Alliance decision...

...(A)gencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. Valencia-Lucena v. U.S. Coast Guard, 336 U.S. App. D.C. 386, 180 F.3d 321, 326 (1999). The search should not be limited to one or more places if there are additional sources for the information requested. Valencia-Lucena, 180 F.3d at 326. Indeed, “the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” Oglesby v. U.S. Dep’t of Army, 287 U.S. App. D.C. 126, 920 F.2d 57, 68 (1990).

TESC should not be allowed to veil nondisclosure of responsive records behind a perfunctory search and claim that they believed that only a report listing was available when they were very well aware that actual Trespass List was available and “Used”, and when the belated Trespass Report Listing was not even produced until a month after West's records request. (See date at bottom of TESC Report Listing CP 20-26)

Significantly, the defendants have not alleged that they were unaware of the existence of these other records. TESC was well aware of the existence of these “records” but deliberately decided

not to disclose them.

RCW 42.56.010 (3) and (4) define public “records” to include “**existing data compilations** from which information may be obtained or translated” (emphasis added),

This definition cannot be misrepresented to omit records such as the **existing “TESC Trespass List”, TESC Police Reports of enforcement of its Trespass Policy, or TESC Trespass related communications**. Yet all of these records were requested and not produced by TESC. (CP 17-18)

For the public to be fully informed of the activities of their government so that the policy of the Public Disclosure and Records Acts can be effectuated, and so that the public may enjoy their constitutional and natural rights to peaceable use of State lands, it is imperative that key records such as records related to the enforcement of trespass laws on State lands be readily available.

The fact that these known responsive records were not disclosed by TESC was a serious omission of relevant and critical data that raises question as to whether it was taken to obscure and

cover up a continuing illegal policy..

The withheld TESC Trespass List was a known responsive record meeting the definitions of RCW 42.56.010 (3) and (4). As the Supreme Court held in PAWS v. University of Washington, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) the failure to produce responsive records known to exist constitutes silent withholding.

TESC therefore violated the PRA by refusing to provide the known responsive records to the plaintiff, particularly when they were known existing records relating to the TESC Trespass Policy.

II The Court erred in dismissing appellant's claims including those related to the threats, arrest, and false imprisonment by TESC under color of its criminal trespass policy taken to chill the exercise of West's constitutional rights

The facts of this case clearly demonstrate that not only does the TESC maintain an illegal Trespass policy, but it employed it to threaten and arrest West unlawfully in an attempt to chill the exercise of constitutional rights.

The Transcript of the hearing of December 20, at pages 22-25, along with the declarations of John Hurley, Ed Sorger, and the Plaintiff, clearly set forth facts sufficient to establish at least a material issue as to whether the appellant was seized, arrested, or unreasonably detained in violation of the 4th Amendment, under color of the TESC Trespass Policy.

When West entered onto the campus to inspect TESC records, he was threatened with the application of the TESC Trespass Policy and arrested, detained, falsely imprisoned for investigation of "Criminal Trespass" pursuant to policies usages and customs of the Evergreen State College. The first, unaltered

declaration of John Hurley (CP 52, lines 4-5) attests to the Unlawful policy correctly.

In *Bouie v. City of Columbia, South Carolina*, 378 U.S. 347 (1964) it was held that in giving retroactive application to a new construction of a criminal trespass statute to prosecuting two African American Gentlemen for Trespass, a racist City Government deprived petitioners of their right to fair warning of a criminal prohibition, and thus violated the Due Process Clause of the Fourteenth Amendment.

The declaration of Officer Monohon attests to an arrest and detention under color of the TESC Trespass Policy (CP 117) Yet despite clear contested facts concerning the unlawful seizure and detention of West under color of the TESC Trespass Policy, and inconsistent and contradictory testimony from the TESC witnesses, the court wrongfully granted summary judgment to TESC on all issues. It was error and a violation of CR 56 for the Court to grant summary judgment when material facts had been reasonably controverted.

III The Court erred in failing to grant a continuance, suppressing relevant evidence, allowing the submission of inconsistent and/or perjured testimony, and in granting summary judgment when factual issues were disputed.

Due process of law requires a reasonable opportunity to present one's case. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) The various actions of the Court in this case abridges the appellant's right to basic due process of law and combined to deny justice based upon altered and inconsistent declarations, material facts that were far from undisputed, and outright misrepresentations of the record by counsel.

In *Bouie v. City of Columbia, South Carolina*, 378 U.S. 347 (1964) it was held that in giving retroactive application to a new construction of a criminal trespass statute to prosecuting two African American Gentlemen for Trespass, a racist City Government deprived petitioners of their right to fair warning of a criminal prohibition, and thus violated the Due Process Clause of the Fourteenth Amendment.

The TESC trespass policy is nearly identical to that

complained of by Bouie and his associate, and has also been used in at least a class based discriminatory manner to target the disenfranchised, poor and homeless (to say nothing of the politically objectionable such as West) in a TESC maintained “Rogues Gallery” of citizens subject to criminal prosecution if they dare to attempt to exercise their civil rights on State land held in trust for the people by the TESC Trustees.

The first declaration of John Hurley clearly identifies the illegal application of the TESC Trespass policy, and it was an abuse of discretion for the Court to allow a materially altered declaration to be filed by counsel at the last minute, particularly when the declaration may very well have been based upon suborned misleading statements of material fact. (See CP 51-52, (first Hurley Declaration, and CP 90-92, second, inconsistent, altered declaration)

Because this case is before (the Court) for a review of a ruling on a motion for summary judgment, we must review the facts and the reasonable inferences from them in the light most favorable to Jones as the nonmoving party. *Bishop v. Miche*, 137 Wn.2d 518,

523, 973 P.2d 465 (1999). A genuine issue of material fact exists if, after weighing the evidence, reasonable minds could reach different factual conclusions about an issue that is material to the disputed claim. *See Hartley v. State*, 103 Wn.2d 768, 775, 698 P.2d 77 (1985). We conclude there is a genuine issue of material fact... *Jones v. State*, 170 Wn.2d 338, (2010)

IV The Court erred in abusing its discretion to attempt to evade an appeal by not entering a final Order subject to Appeal

In this case, the record is clear that West filed a motion for reconsideration within 10 days of entry of judgment but apparently did not also note the matter for a hearing or other disposition. CR 59. TESC contends these flaws render the appeal untimely. It did not; a party's failure to note a motion for reconsideration at the time of filing does not affect the time allowed for filing a notice of appeal. *In re Detention of Turay*, 139 Wn.2d 379, 391, 986 P.2d 790 (1999); *Buckner, Inc. v. Berkey Irrigation Supply*, 89 Wn. App. 906, 916, 951 P.2d 338 (1998).

The filing of a timely motion for reconsideration tolls the time for filing of the appeal until the trial court decides the motion. RAP 5.2(a), (e); see also Turay, 139 Wn.2d at 391-92; Buckner, 89 Wn. App. at 916; In re Marriage of Estes, 84 Wn. App. 586, 595, 929 P.2d 500 (1997). 'The rule of appellate procedure makes no reference to the timeliness of the trial court's decision on the motion for reconsideration.' Estes, 84 Wn. App. At 595.

The delay in deciding the motion does not affect the tolling of the time for filing an appeal. Estes, 84 Wn. App. at 595. Because West filed a notice of appeal within 30 days after the trial court indicated it was evading entering a ruling on the motion for reconsideration, the appeal is timely. Turay, 139 Wn.2d at 391; Buckner, 89 Wn. App. at 916; Estes, 84 Wn. App. at 595.

CONCLUSION AND RELIEF SOUGHT:

This case underscores why the paramount right to be informed of the operation of government as is a precondition to the

sound governance of a free society.

For the laws of the State of Washington to actually be enforced as they are written on the campus of TESC, it is imperative that the records of the unlawful TESC Trespass policy be disclosed, and that our courts operate as required by the constitution and laws.

In enacting the Public Records Act, now codified as Chapter 42.56 RCW, both the people and the legislature of this state have declared and affirmed a policy of open government. (*See* RCW 42.56.030).

A decision to allow TESC to flaunt its noncompliance with both the PRA and the laws of Trespass would utterly contravene this policy, as well as the constitutional mandate assigning such policy decisions to the legislature. *See Moran v. State*, 88 Wn. 2d 867, 875, 568 P.2d 758 (1977) ("We must always remember that we are not a super legislature. It is not our role in government to enact legislation or to add provisions or to change provisions in legislation which are otherwise clear.").

The decision of the Trial Court should be vacated, and this

case remanded back for further proceedings, with instructions for the award of appropriate costs and penalties for the unlawful withholding of records related to the TESC Trespass Policy and its unlawful application to arbitrarily bar citizens from lawful enjoyment of public lands in the absence of due process of law.

Respectfully submitted this day of February 17, 2015.


ARTHUR WEST

CERTIFICATE OF SERVICE

I certify this document was transmitted to and served on counsel for the TESC on February 17, 2015 at the office of the Attorney General of the State of Washington.


ARTHUR WEST

FILED
COURT OF APPEALS
DIVISION II

2015 FEB 17 AM 9:19

STATE OF WASHINGTON

BY _____
DEPUTY

Ms. Martin

-2-

May 9, 1989

have unilateral authority to restrict access to the public areas of the campus. Consequently, any kind of list which may have been maintained in the past at the college which bars access of private citizens to the common campus areas is ineffective.

As we also discussed, housing and related activities have a different posture. These are not public areas. Nor, for example, is a classroom or office. But I must stress that self-help remedies are not appropriate. The college, like any other member of the community, must rely on community law enforcement resources.

Please indicate if you concur in these recommendations and, if so, a time convenient to meet so as to establish a plan to implement these recommendations.

MEG:lb

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1

The Evergreen State College

CAMPUS SECURITY
Seminar Building-Suite 2150

May 19, 1989

TO: Campus Security Staff
FROM: Gary Russell
RE: Procedural Changes-Criminal Trespass

As the result of a meeting with Vice President Gail Martin and Assistant Attorney General Mike Grant concerning criminal trespass and it's use, we will be following a slightly different procedure when we envoke a trespass warning. The criteria and procedure, which is effective immediately, will be as follows:

1. If, resulting from an investigation or actual observation, you arrest or cite a person under the criminal code, you may in conjunction with that action issue a criminal trespass advisement ordering the person to leave campus forthwith. The trespass order should only be issued if, in your judgement, the person's continued presence on campus is likely to compromise the safety of persons or property or create additional law violations, ie, disturbance. And, as always, the trespass order may only be given to non-community persons that are not associated with the college as a student, staff person or faculty. A person may be arrested for failure to comply with your order to leave the campus under these conditions.
2. If a person arrested or cited and ordered off campus subsequently returns and is again involved in illegal activity, you may, along with any other criminal charges, charge the person with violation of the appropriate criminal trespass law.
3. However, if a person is subsequently observed on campus after having been arrested or cited for a law violation and having complied with an order to leave campus at the time of the citation or arrest, that person should not be charged with a violation of the criminal trespass order if their actions at the time of observation do not violate the law.

The above outlined procedures are based upon the understanding that the public has a traditional right to be on the public or common areas of campus or may be invited guests as long as they do not violate laws or campus regulations.

cc: Gail Martin

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NO. 89-200696-8

FILED
SUPERIOR COURT
THURSTON COUNTY
MAY 8 1989

BY: [Signature] DEPUTY CLERK

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THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY
ARTHUR WEST,
Plaintiff,
v.
TESC Board of Trustees,
Defendant.

NO. 89 2 00696 8
MOTION FOR SUMMARY JUDGMENT FOR
DECLARATORY RELIEF

Comes now the plaintiff, Arthur West, Pro Se, and respectfully moves the court for the following relief:

1. That the Court enter a summary judgment for declaratory relief in his favor declaring EAC 174-136-050 and ~~EAC 174-136-052~~ to be invalid, and

2. That TESC authority to arrest any person or persons for violation of RCW 9A.52 be restricted to having the authority to arrest only those persons in violation of RCW 9A.52.

There is no question in this cause as to whether the above mentioned EAC rule was adopted without compliance with statutory rule-making procedure and whether it exceeds the institution's statutory authority, and the plaintiff is entitled to judgment as a matter of law.

This motion is based on CRs 56 and 57, RCW 28B.19, the two certifications from the Code Revisor, attached hereto, the notice of proposed rules, WSR 88-22-080, attached hereto, the statement withdrawing said notice, attached hereto, the files and records herein, and the Declaration set forth below.

//////////

MOTION AND DECLARATION FOR
SUMMARY JUDGMENT

ARTHUR WEST
3135 Kaiser Road, N.W.
Olympia, Washington 98502

THUCOUR0100001320040700100000283



MO-PUBLIC #3
4

The Evergreen State College

CRIMINAL TRESPASS LIST INFO

NAME	ISSUED BY	REASON
<u>A</u> Armstrong, Robert J.	C/R 86-2598/Anderson/Non student,	drinking in public & carr a weapon. (club)
<u>B</u> Bloodgood, James R.	C/R	ident, indecent exposure, no clo
Bouge, Linda B.	C/R	ident, disturbance, accident & D
Bowen, Dale J.	C/R	lent, transient & OPD rape suspect
AKA, Puma/Aquilla	C/R	nt, under age drinking in B-lot
Brock, Raymond P.	C/R	
<u>C</u> Carlson, Jeff	C/R	icator, Vandalism & behavioral
AKA, Southwood, Jeff	C/R	ent, disturbance, accident & D/D
Cleeves, Robert Allen	C/R	ent, malicious Mischief & drink
Colwell, Terri Marie	C/R	icator, social contract violator
Cummins, Tom	C/R	housing eviction.
Curry, Robert M.	C/R 83-534/Anderson, non student,	vehicle impound escape.
<u>D</u> Dalzell, Janice S.	C/R 85-315/Smithson, non student,	public drinking & disturba in the dorms.
Dugan, Patrick M.	C/R 85-826/Anderson & Adjudication request,	behavioral
<u>E</u> Eash, James M.	C/R 83-614/Savage, student,	under age drinking in B-lot
Edwards, Daniel M.	C/R 82-841/Adjudicator Jacob,	transient in dorms, disturbanc open drinking
Evans, Ben W.	C/R 80-1279/Adjudicator Jacob,	transient, disturbances
<u>F</u> Frost, Vance	C/R 83-511/Adjudicator Jacob,	adjudicator hold & trespass

THUCOU001000013200407801N00002286

RECEIVED

OCT 25 1990

DAVID RIDGWAY
7327 Martin Way
Olympia, WA 98506

October 25, 1990

President of TESC
The Evergreen State College
Olympia, WA

RE: Petition for review of decision to deny access
to Public Records, related matters

Dear President Purce;

Please consider this letter a petition to review a
letter denying me access to TESC public records (Appendix A)
as well as a request for more timely access to records which
will be provided.

I have been requesting records pertaining to TESC
criminal trespass policy since December 4, 1989 and TESC public
records officers have been denying the existence of any such
records up through October 4, 1990 (Appendix B). In response
to my request of October 19, 1990 (Appendix C) Mr. Jones first
said the records would be provided (Appendix D), then denied
half my requests the next day.

Now Mr. Jones contends my requests relating to TESC
security officers and criminal trespass policy are subject to
the rules of discovery because a Mr. Arthur West filed suit
against TESC on these matters, then instructs me to address my
discovery requests to the school's lawyer, who I believe is
Assistant AG Mike Grant.

I have only requested material which is defined in
the various statutes as public records. Perhaps if I were re-
questing the sort of records which would only be available
to a litigant such as Mr. West pursuant to a discovery request
I could see some basis for Mr. Jones' decision. But I have not.

In fact, I believe even Mr. West can still expect a
prompt response to any public records request and would only
need to use discovery to obtain material which is not defined
as public records but which may be relevant to his lawsuit.

I can find no lawful authority which suspends the
Public Disclosure Act when a public agency such as TESC is
involved in litigation. Of course, if the school cites an
authority which clearly does so, and is not superceded by the
PDA, I could consider such an authority basis for denial of
this petition.

However I don't believe any such authority exists
so I am asking that you instruct Mr. Jones to comply with my
requests as required by law.

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MO PUBLIC #3

President Les Force, TESC
October 23, 1990
Page 2

That a public agency, particularly TESC, which has promulgated JAC 174-120-020, would conduct its affairs in such a manner that persons affected thereby must resort to litigation, then inform anyone requesting public records in the subject area of the litigation that his or her request is subject to the rules of discovery, which are governed by 11 lengthy court rules and hundreds of appellate court decisions and which even confound many attorneys, and which entail procedures that, in any event, are only available for use between parties to litigation, presents an absurd picture of new depths of bureaucratic obfuscation that appears suspiciously like a violation of the above mentioned JAC 174-120-020. While the school might, and should, be concerned about its officers violating the Social Contract, my concern is that I be dealt with according to law.

My experience attempting to get access to TESC public records has been waiting months, then only getting a fraction, if any, of the records I requested. Since much of the earlier requested material has still not been provided, I am not by any subsequent request waiving my earlier requests. Some of my latest request are geared toward determining the veracity of earlier responses.

The materials requested in Appendix C should be in easily discernable and obtainable indices and files. I don't believe a delay of more than two or three weeks, if that long, would be the prompt response required by the Public Disclosure Act. Would you please instruct Mr. Jones to comply with the law in that regard, also?

My experience seems to indicate some members of the TESC community are seeking to evade scrutiny of their past conduct. Possibly the records I have requested, and related material which might not necessarily be available to me, would be of interest to yourself in light of the grave responsibilities you have taken on at this critical time in TESC history.

Thank you for your consideration. I remain

Respectfully yours,


David Ridgway

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